

S.A.G.A

SOUTH AFRICAN GROOMS ASSOCIATION



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Maintaining the Integrity of the skills developments for the (HDI's) of the Sports of the Horse Riding Industry

The Chief Executive Officer (Interim)

Gauteng Gambling Board ("GGB")

125 Corlett Drive

Bramley

Johannesburg

2018

30 August 2021

Dear Mr. Marimuthu,

APPLICATION FOR SUMMONING OF WITNESSES IN TERMS OF SECTION 29 OF THE GAUTENG GAMBLING ACT ("the Act") FOR THE HEARING ON 10 SEPTEMBER 2021 IN RESPECT OF APPLICATIONS FOR THE TRANSFER OF RACE-MEETING AND OTHER GAMBLING LICENCES TO 4RACING PROPRIETARY LIMITED ("the Applicant")

We refer to SAGA's written submissions regarding:

- (i) the 4Racing applications to GGB pursuant to section 35 of the Act that did not comply with the requirements of the Act and was accepted and processed by GGB in contravention of the Act;
- (ii) Mr. Mxolisi Zwane's accepting the appointment as Chairman of 4Racing on 1 April 2021, in contravention of section 13(2) of the Act and his conflict of interest as a consequence of his interests in the Applicant and their advisors (Messrs MF De Kock, B Riley, CH Savage, W Smith) who are connected to Mr. Mxolisi's spouse;
- (iii) Mr. Mxolisi Zwane's spouse, Ms Mapula Sambo was unlawfully co-opted and appointed to the Board of Directors of the Racing Association Proprietary Limited ("RA") by a director

of the Applicant and three other advisors of the Applicant who were also Directors of the RA;

- (iv) allegations of abuse of power, maladministration, improper conduct and receipt of improper advantage by 4Racing from GGB as tabled to the office of the Public Protector on 22 April 2021 for further investigation; and
- (v) Our letter to GGB dated 23 August 2021 regarding summoning of witnesses and the general disqualifications for licences.

BACKGROUND IN SUPPORT OF THE REQUEST FOR SUMMONING OF WITNESSES

The Applicant is an affiliate of Mary Oppenheimer Daughters Proprietary Limited (“**MOD**”) and a nominee of MOD to be the acquiring entity of the Horseracing assets from Phumelela Gaming and Leisure Limited (in business rescue) (“**PHM**”). MOD has been widely reported as “the single-family office for Mary Oppenheimer and her Daughters”. Ms. Mary Slack (nee Oppenheimer) (a director of MOD) and her daughter, Jessica Jell (nee Slack) are the financial sponsors for the Applicant. The directors of the Applicant include Ms. E Callister (British) (also a director of MOD) and Mr. CH Savage.

Circa October 2018, Messrs. MF De Kock and CH Savage were approached by Ms. Jessica Jell to run for the RA Board of Directors vacant positions (refer: <https://www.sportingpost.co.za/2018/10/ra-national-board-elections/>). It is SAGA’s understanding that Mr. B Riley, Chairman of the RA, was also influenced by the Slack family to join the RA’s Board of Directors. In the months immediately preceding 8 May 2020, the date that PHM filed for business rescue, the Board of Directors of the RA comprised Messrs MF De Kock, B Riley, CH Savage, W Smith and GW Paddock. Except for Mr. GW Paddock, the entire Board of Directors of the RA, were appointed by MOD to advise on the acquisition of the Horseracing assets of PHM. The RA together with its affiliate, the Thoroughbred Horseracing Trust, are collectively the largest shareholder in PHM. The RA appoints the trustees to the Trust and as such have significant control of PHM. It is unclear how the four directors of the RA, who have a fiduciary duty as the significant shareholder of PHM, concluded that they were not conflicted to act as advisors to MOD/Applicant who were compiling an offer to acquire significant assets of PHM. By virtue of the four directors accepting their appointment as advisors to MOD/Applicant, it remains to be tested whether any decisions taken by the RA in relation to PHM was in the best interest of the RA or whether it was in the best interest of MOD/Applicant? It’s unclear how a party that represents one of the largest shareholding blocks in PHM can take on the role of an advisor to a bidder (MOD/4Racing) without being conflicted.

Of particular concern are the actions of all five directors of the RA, on or about 18 May 2020, in unlawfully co-opting and appointing Ms Mapula Sambo (the spouse of Mr. Mxolisi Zwane) to the Board of Directors of the RA, in breach of the provisions of the Memorandum of Incorporation (“MOI”) of the RA. Ms. Mapula Sambo was not a colours holder on 18 May 2020 and as such the RA misrepresented same to the public in their announcements on 18 May 2020. Furthermore, SAGA has reason to believe that the RA processed an irregular payment to fulfil the payment obligations of Ms. Mapula Sambo to apply for colours to the National Horseracing Authority (“NHA”).

The Applicant’s appointment of Mr. Mxolisi Zwane as the Chairman of the Applicant on 1 April 2021 suggests a level of impropriety on the part of both the Applicant and Mr. Mxolisi Zwane. While the GGB was processing the application from the Applicant, Mr. Mxolisi Zwane was conflicted as the Chairman of the GGB as he was also negotiating and accepted the position as the Chairman of the Applicant in contravention of section 13(2) of the Act. It’s unclear whether Mr. Mxolisi Zwane declared his conflicts of interest in relation to the Applicant to GGB insofar as his spouse was connected to the Applicant, a director of the Applicant and the advisors of the applicant. Additionally, Mr. Mxolisi Zwane has a conflict of interest as there appeared to be a tacit agreement between the Applicant and Mr. Mxolisi Zwane that he was to be appointed as the Chairman of the Applicant prior to his resignation from GGB. Furthermore, SAGA understands that a family member of Mr. Mxolisi Zwane is currently part of the management structure of PHM and its is unclear whether this fact was flagged as a conflict of interest by PHM, the Applicant or Mr. Mxolisi Zwane.

It is SAGA’s considered view that all persons named above may have acted in a manner contemplated in section 30(1)(f) (*is not a fit and proper person to be involved in the business concerned*) read together with section 30(2)(c) (*whether such person has taken part or been associated with any practice which is deceitful, prejudicial or otherwise improper or discreditable, whether unlawful or not*). The GGB has a duty and responsibility to summons all of the above named personnel to establish whether their individual and or collective actions render the Applicant to be disqualified under section 30 of the Act.

Moreover, should the actions of any or all of the above mentioned persons be found to be as contemplated in section 30(2) (c) of the Act, the NHA will be call on the enforce the provisions of its MOI to terminate the membership of the said persons and disqualify them from participating henceforth in the Thoroughbred Horseracing industry.

WITNESSES AND DOCUMENTS

In the circumstances and in accordance with section 29 of the Act, we hereby request the following individuals be subpoenaed with the accompanying documents listed below to appear for the hearing set down by GGB on 10 September 2021:

1. Messrs MF De Kock, B Riley, CH Savage W Smith and GW Paddock

- Copies of RA Board minutes, documents and correspondence relating to the appointment of Ms. Mapula Sambo as a director to the RA;
- Copies of all minutes of meetings, documents and correspondence pertaining to the each of their appointment as advisors to MOD/Applicant including their engagement agreements;
- Copies of all minutes of meetings, documents and correspondence pertaining to the decision taken by the Board of Directors of the RA in relation to PHM, subsequent to acceptance of the appoint as advisors of MOD/Applicant. In this regard, could the RA Board of Directors lawfully take decisions pertaining to PHM if majority of the board members were conflicted;
- Copies of all minutes of meetings and agreements concluded with PHM subsequent to acceptance of appointment as advisors of PHM; and
- Copies of all minutes of meetings, documents and correspondence where the relationship of Ms. Mapula Sambo and Mr. Mxolisi Zwane were flagged and or noted as connected persons and potential conflicts of interest were noted.

2. Ms. NA Turner

- Copies of all minutes of meetings, documents and correspondence pertaining to Ms. Mapula Sambo's appointment as a director;
- A copy of the delegation of authority from the Board of Directors of the RA to management of the RA; and
- Copies of any payment instructions, payment requisitions, proof of payment(s) and bank statements pertaining to the payment processed by the RA to the NHA regarding Ms. Mapula Sambo's application for colours, including email trails.

3. Mr. MF De Kock

- Copies of all agreements concluded with Ms. Mapula Sambo as an owner and Mike De Kock Racing;
- All invoices raised and evidence of all payment received from Ms. Mapula Sambo (or a syndicate member of the ownership syndicate that Ms. Mapula Sambo was a syndicate member) from 18 May 2020 to date to Mike De Kock Racing; and

- Evidence of payments processed to Ms. Mapula Sambo (or a syndicate member of the ownership syndicate that Ms. Mapula Sambo was a syndicate member), including prize monies earned when her horses won or were placed.

4. Ms. Mary Slack

- Copies of MOD Board minutes, documents and correspondence relating to the appointment of Messrs MF De Kock, B Riley, CH Savage and W Smith and advisors;
- Copies of MOD Board minutes, documents and correspondence relating to the appointment of Mr. Mxolisi Zwane as the Chairman of 4Racing; and
- Copies of all minutes of meetings, documents and correspondence where the relationship of Ms. Mapula Sambo and Mr. Mxolisi Zwane were flagged and or noted as connected persons and potential conflicts of interest were noted.

5. Ms. E Callister and Mr. CH Savage

- Copies of 4Racing Board minutes, documents and correspondence relating to the appointment of Mr. Mxolisi Zwane as the Chairman of 4Racing; and
- Copies of all minutes of meetings, documents and correspondence where the relationship of Ms. Mapula Sambo and Mr. Mxolisi Zwane were flagged and or noted as connected persons and potential conflicts of interest were noted.

6. Ms. Jessica Jell

- Copies of all minutes, documents and correspondence relating to her interactions with Messrs MF De Kock, B Riley, CH Savage W Smith, Mxolisi Zwane and Ms. Mapula Sambo pertaining to MOD/4Racing acquisition of PHM's Horseracing assets and the applications submitted to GGB.

7. Ms. Mapula Sambo

- Copies of all submissions, document and correspondence to and from the RA pertaining to the application and acceptance of the appointment as a director of the RA;
- Copies of all minutes of meetings, documents and correspondence where the relationship of Ms. Mapula Sambo and Mr. Mxolisi Zwane were flagged and or noted as connected persons and potential conflicts of interest were noted;
- Copies of all minutes of meetings, documents and correspondence between Ms. Mapula Sambo and the NHA pertaining to the application for colours;
- Proof of payment for the application for colours to the NHA;

- Copies of all minutes, documents and correspondence from the NHA confirming you're your colours application was approved;
- Copies of all costs incurred as an owner (or syndicate member) and the accompanying proof of payments; and
- Proof of payment of all revenue earned as an owner (or syndicate member).

8. Mr Mxolisi Zwane

- Copies of all minutes of meetings, document and correspondence with MOD, 4Racing, Messrs MF De Kock, B Riley, CH Savage W Smith;
- Copies of all submissions, document and correspondence to and from MOD/4Racing pertaining to the application and acceptance of the appointment as Chairman of the 4Racing; and
- Copies of all minutes of meetings, documents and correspondence where the relationship of Ms. Mapula Sambo and Mr. Mxolisi Zwane were flagged and or noted as connected persons and potential conflicts of interest including the position of Chairman of GGB.

9. Mr. L Wainstein

- As an ex- Chief Executive Officer ("CEO") of the RA, Mr. L Wainstein held the position of CEO from January 2012 to January 2020 and will provide input into the procedural irregularities of the conduct of the RA directors listed in 1. above and whether the appointment process for Ms. Mapula Sambo conflicts with the provisions of the RA MOI;
- Mr. L Wainstein's testimony on whether the corporate culture and operational framework of the RA included non-executive directors participating in and taking operational decisions on the day-to-day affairs of the RA;
- Mr. L Wainstein to testify whether the RA directors listed in 1. above declared their conflicts of interest in relation to their appointment as advisors to MOD/4Racing and whether they recused themselves from all matters pertaining to PHM while Mr. L Wainstein was on the Board of Directors of the RA; and
- Mr. L Wainstein to provide an overview of the relationship between the RA and the Trust worked and collaborated including how candidates were screened and appointed to the RA Board of Directors and the Trust as Trustees.

10. Mr. JA Stuart

- As an ex-CEO of PHM, Mr. JA Stuart held the position of CEO until 15 May 2020 and will provide input on his interactions with the RA directors listed in 1. above in the months leading up to his resignation;
- Mr. JA Stuart will confirm whether the RA directors listed in 1. above assumed the executive and management role of the RA when dealing with PHM and whether these individuals also engaged him and PHM as advisors of MOD/4Racing; and
- Mr. JA Stuart to testify whether the RA directors listed in 1. above engaged him and PHM free of conflicts of interest in matters pertaining to the RA and MOD/4Racing.

11. Mr. V Moodley

- Copies of all minutes of meetings, documents and correspondence between Ms. Mapula Sambo and the NHA pertaining to the application for colours;
- Proof of payment for the application for colours by Ms. Sambo; and
- Copies of all minutes, documents and correspondence from the NHA confirming Ms. Mapula Sambo's application for colours was approved.

PUBLIC PROTECTOR'S CURRENT INVESTIGATION INTO THE SUBJECT MATTER

The previous Public Protector, Advocate Thuli Madonsela, used cell phone data on the "Report on State Capture" to gather credible evidence on the conduct and interactions of all persons that were the subject of that investigation. To the extent that the persons listed above for summoning of witnesses are found wanting at the hearing, SAGA will request the Public Protector to triangulate the interactions of all individuals, boards or other fora, by the use of cell phone data. Since SAGA tabled its objection to GGB on 15 February 2021, SAGA's members have been approached on multiple occasions by 4Racing's director, manager and advisors with threats of job losses if they did not support 4Racings bid to acquire PHM's Horseracing assets. SAGA has duly noted the dates and places where these acts of intimidation were perpetrated in addition to multiple meetings that were held at Randjiesfontein by majority of the witnesses identified in 1. to 8. above.

We trust that the content of this letter will result in a fair and equitable hearing.

Yours faithfully.



CN SIMOTO
CHAIRPERSON OF SAGA