25 January 2023

**DECISION**

**RACING VICTORIA**

**and**

**SHANE GARDINER**

**Date of hearing:** 16 January 2023

**Panel:** Judge John Bowman (Chairperson) and Ms Judy Bourke.

**Appearances:** Mr Marwan El-Asmar appeared on behalf of the Stewards.

Mr Shane Gardiner did not attend the hearing.

**Charges:** Australian Rule of Racing (“AR”) 229(1)(a) states:

(1) A person must not:

(a) engage in any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing.

AR 232(b) states:

A person must not:

(b) fail or refuse to comply with an order, direction or requirement of the Stewards or an official.

**Particulars of charges: Charge 1: AR 229(1)(a)**

1. You are, and were at all relevant times, a licensed Stablehand registered by Racing Victoria.
2. During the month of September 2020, you offered a 15% share in an unnamed colt (the Horse) to a Mr Maxwell Dixon for the total sum of $3,750.00 to which Mr Maxwell Dixon accepted.
3. The total sum of $3,750.00 was paid into your nominated Commonwealth Bank account by Mr Maxwell Dixon.
4. You, did not own the Horse or have any authority to sell any shares in the Horse.
5. During an interview on the 18 March 2022, you confirmed that the sale of the shares in the Horse was a deception in order for you to receive money to fund your gambling addiction.
6. The conduct you engaged in (as noted in particulars 2 - 5) was dishonest, fraudulent and improper and accordingly in breach of AR 229(1)(a).

**Charge 2: AR 229(1)(a)**

1. You are, and were at all relevant times, a licensed Stablehand registered by Racing Victoria.
2. During the month of September 2020, you offered a 5% share in an unnamed colt (the horse) to a Mr Raymond Storm for the total sum of $1,250.00 to which Mr Raymond Storm accepted.
3. The total sum of $1,250.00 was paid into your Nominated Commonwealth Bank account by Mr Raymond Storm.
4. You did not own the Horse or have the authority to sell any shares in the Horse.
5. During an interview on the 18 March 2022, you confirmed that the sale of the shares in the Horse was a deception in order for you to receive money to fund your gambling addiction.
6. The conduct you engaged in (as noted in particulars–2 - 5) was dishonest, fraudulent and improper and accordingly in breach of AR 229(1)(a).

**Charge 3: AR 229(1)(a)**

1. You are, and were at all relevant times, a licensed Stablehand registered by Racing Victoria.
2. During the month of September 2020, you offered a 15% share in an unnamed colt (the Horse) to a Mr Lachlan Treble for the total sum of $3,750.00 to which Mr Lachlan Treble accepted.
3. The total sum of $3,750.00 was paid into your nominated Commonwealth Bank account by Mr Lachlan Treble.
4. You did not own the Horse or have any authority to sell any shares in the Horse.
5. The conduct you engaged in (as noted in particulars 2 - 4) was dishonest, fraudulent and improper and accordingly in breach of AR 229(1)(a).

**Charge 4: AR 232(b)**

1. You are, and were at all relevant times, a licensed Stablehand registered by Racing Victoria.
2. On the 5 September 2022, you received an email from Stewards which contained the following direction

(a) The Stewards direct you to attend the offices of Racing Victoria and participate in an interview at the below specified time and date (11.00am 13.09.2022);

(b) If you unable to attend the office of Racing Victoria at the specified time and date you are directed to advise Mr. Ilan Livingston via email of your unavailability and to inform Mr. Livingston of a more suitable time and date; and

(c) If you are unavailable to attend the office of Racing Victoria at the time and date specified due to being interstate you are directed to make yourself available for an interview to be conducted via telephone at the below specified time and date (11.00am 13.09.2022).

1. On the 13 September 2022, you failed to attend the offices of Racing Victoria at 11.00am as directed by Stewards.
2. On the 13 September 2022, at 11.00am you failed to answer your telephone as directed by Stewards.

**Pleas:** Not Guilty

**RULING**

Mr Shane Gardiner failed to appear at the hearing of this matter on 16 January 2023. Concerted efforts have been made to contact Mr Gardiner. He faces four charges. At the relevant time, essentially in 2020, he was a licensed stablehand. However, his licence expired in July 2022 and there has been no attempt to renew it since.

Early in the history of this matter, there was communication with Mr Gardiner. However, that ceased and the last telephone contact was in July 2022. The case was the subject of a Directions Hearing on 21 September 2022. It had previously been fixed for hearing on 9 November 2022. Mr Gardiner did not attend, or make any contact, on or prior to each occasion and the Stewards were not able to make any contact with him. The hearing on 9 November 2022 was adjourned so that further attempts at communication could be made. On behalf of the Stewards, Mr Ilan Livingston had made contact on several occasions with Mr Gardiner’s mother and particularly in December 2022. However, no cooperation in relation to contact with her son eventuated. The same could be said of attempted contact via Mr Gardiner’s brother. Thus, the last date of contact would appear to be a phone call on 21 June 2022. Attempts at subsequent telephone communication have been fruitless, in addition to the failure to be able to make personal contact.

In those circumstances, we formed the view that we should proceed to hear the matter. The power so to do in the absence of a party is found in Section 50Q(1)(a)(iii) of the *Racing Act* 1958. Insofar as any questions of law might arise, the Chairperson is of the view that the case can and should be heard. Pleas of not guilty were entered by us for all charges.

**DECISION**

Mr Gardiner faces four charges. Charges 1, 2 and 3 are pursuant to Australian Rule of Racing (“AR”) 229(1)(a). They essentially involve improper conduct. The conduct in question related to the purported purchasing of shares in thoroughbred horses for three separate purchasers, Messrs. Dixon, Storm and Treble. The conduct could be summarised as the obtaining of money from each individual for the purchase of an unraced young thoroughbred, highly recommended by Mr Gardiner as a licensed stablehand. No horses were ever produced and the money never refunded.

Charge 4 is pursuant to AR 232(b) and relates to the failure of Mr Gardiner to attend meetings with the Stewards, observe the processes in place and the like.

We shall now deal with Charge 1, which concerns the purported sale of a share in a young horse to Mr Maxwell Dixon. The amount involved is $3,750. The horse was recommended in glowing terms based on Mr Gardiner’s occupation, experience and knowledge. No horse was ever produced and the $3,750 never returned. A letter from Mr Dixon was placed in evidence. It refers to the anguish and mental upset that the whole unfortunate affair has caused him.

Charge 2 is along similar lines. The purported purchaser was Mr Raymond Storm. He outlayed $1,250. Excuses, such as gelding, were advanced by Mr Gardiner in relation to non-production of the horse. There was a refund of $500. $750 was never recovered.

Charge 3 concerns Mr Lachlan Treble. The amount he paid to Mr Gardiner was $3,750, in two instalments. No ownership paperwork was completed. No horse was ever produced. No money was ever refunded or recovered.

We might add we are far from convinced that any of the horses offered for sale actually existed.

The substantial Briefs of the Stewards were placed in evidence, as was a Victim Impact Statement of Mr Dixon.

Charge 4 is of a different nature. It concerns the effective refusal of Mr Gardiner to cooperate with the Stewards, including his failure to attend meetings and the like, particularly after approximately June 2022. About all that the Stewards were able to ascertain from him prior to that was that he had a gambling problem and that is where the money went. Overall, there has been an almost complete failure to cooperate, and, in the last seven months, the placing of obstacles in the path of any investigation, associated with the total lack of cooperation.

We are of the view that the Stewards have proved the charges against Mr Gardiner to our comfortable satisfaction. They have discharged the burden of proof.

We turn now to the question of penalty.

**PENALTY**

We agree with the submissions of Mr Marwan El-Asmar in relation to the nature of the offending insofar as Charges 1, 2 and 3 are concerned. There are various matters to be taken into account. We agree that these are serious matters, involving, as they do, preying on vulnerable members of the community. The three victims concerned placed their trust, and their money, in the hands of Mr Gardiner. In particular, they so placed that trust because he was a stablehand – that is, a licensed member of the racing industry. He betrayed that trust.

That has a direct and adverse impact upon the image of the industry. It undermines that image. It can have an adverse effect upon those contemplating investments in the industry. To put it simply, word gets around. New potential owners may be deterred from investing. That is over and above the impact upon the three victims of the behaviour of Mr Gardiner. The statement of Mr Dixon is to be borne in mind. Each has lost a significant amount of money.

Mr El-Asmar referred us to two previous cases involving a similar style of deception. They are the matters of Greyhound Racing Victoria v Craig Trickett (17 March 2022) and Harness Racing New South Wales v Michael Day (2015). However, in each instance, the person charged pleaded guilty, expressed remorse and cooperated with the Stewards. It is argued that the type of penalty imposed in the matter of Day is appropriate in the present case.

In the present case, there has not been pleas of guilty. There has not been the expression of any remorse – only a reference to a gambling addiction. There has been virtually a total absence of cooperation, but at least part of that is covered by Charge 4.

We are of the opinion that, on Charges 1, 2 and 3, a lengthy period of disqualification is warranted. Apart from the repeated absence of Mr Gardiner, there is also the absence of any real expression of regret or remorse.

The penalties we impose on Charges 1, 2 and 3 are essentially those recommended by the Stewards. Their recommendations seem to us to be well researched, well presented and, above all, fair.

Thus, the penalties imposed are as follows: -

Charge 1: disqualification for five years.

Charge 2: disqualification for five years, with two and a half years concurrent with the penalty imposed on Charge 1.

Charge 3: disqualification for five years, with two and a half years concurrent with the penalty imposed on Charge 1.

Thus, there is a total period of disqualification of 10 years.

In relation to Charge 4, Mr Gardiner’s total lack of cooperation with the Stewards since mid-2022 and his very limited cooperation prior to that represent a serious breach of AR 232(b). There has been a repeated failure to attend when required and failure to communicate or respond to communications. There appears to have been a wilful termination of communication and an approach more resembling obstruction. The work of the Stewards is difficult enough without having to endure this time-wasting and annoying obstruction.

On Charge 4, the penalty imposed is disqualification for one year. However, we bear in mind that the factual matrix of this obstruction by way of failure to attend or communicate does overlap, at least to some extent, with the pattern of behaviour generally and the total disregard for the image and well-being of the industry.

The penalty on Charge 4 shall be concurrent with the penalties imposed on Charges 1, 2 and 3.

Thus, the total period of disqualification is 10 years.

Kathleen Scully

Assistant Registrar, Victorian Racing Tribunal