27 August 2021

**DECISION**

**GREYHOUND RACING VICTORIA**

**and**

**RINALDO DIVIRGILIO**

**and**

**BEN DIVIRGILIO**

**Dates of hearings:** 29 March 2021 and 30 March 2021

**Panel:** Judge John Bowman (Chairperson), Justice Shane Marshall (Deputy Chairperson) and Dr Andrew Gould.

**Appearances:** Mr Damien Hannan instructed by Mr Marwan El-Asmar appeared on behalf of the Stewards.

Mr Rinaldo Divirgilio was represented by Mr Brian Selleck.

Mr Ben Divirgilio was represented by Mr Lynton Hogan.

**Charges and particulars: RINALDO DIVIRGILIO**

**Charge No.1 of 5**

Local Racing Rule (LR) 42.18 (a) reads as follows:

42.18 Subject to 42.19 but without derogating from LR 42.13 to LR 42.15, it is a Serious Offence for a person to:

1. use in connection with greyhound training, education or preparation to race, or racing, any animal, animal carcass or any part of an animal whether as bait, quarry or lure, or to entice, excite or encourage a greyhound to pursue it or otherwise;

**Particulars of the Charge being:**

1. You are and were at all relevant times a breeder and public trainer licenced by Greyhound Racing Victoria (GRV) (licence number 1708) and a person bound by The Greyhounds Australasia Rules (GAR) and Local Racing Rules (LRR).

2. You were at all relevant times a person responsible for the care and supervision of the Greyhounds housed at your GRV registered kennelling premises, namely, 41 Fisheries Road, Devon Meadows Victoria 3977.

3. Between 1 August 2017 and 8 December 2017 you were the registered trainer of 'Merinda Hannah' (TDAJZ).

4. Between 1 August 2017 and 8 December 2017, you used in connection with greyhound training, education or preparation to race, a live possum as bait, quarry or lure, to entice, excite or encourage the greyhound 'Merinda Hannah' (TDAJZ) to pursue it.

**Charge No. 2 of 5**

Local Racing Rule (LR) 42.18 (b) reads as follows:

42.18 Subject to 42.19 but without derogating from LR 42.13 to LR 42.15, it is a Serious Offence for a person to:

1. attempt to possess, or have possession of, or bring onto, any grounds, premises or within the boundaries of any property where greyhounds are trained, kept or raced, any animal, animal carcass or any part of an animal for the purpose of being, or which might reasonably be capable of being, or likely to be, used as bait, quarry or lure to entice or excite or encourage a greyhound to pursue it. (amended 0111012017)

**Particulars of the Charge being:**

1. That you are and were at all relevant times a breeder and public trainer licenced by Greyhound Racing Victoria (GRV) (licence number 1708) and a person bound by The Greyhounds Australasia Rules (GAR) and Local Racing Rules (LRR).

2. That you were at all relevant times a person responsible for the care and supervision of the Greyhounds housed at your GRV registered kennelling premises, namely, 41 Fisheries Road, Devon Meadows Victoria 3977 ("the premises").

3. That on the 25 October 2019, Investigative Stewards located three (3) possum traps containing two (2) live possums at the premises.

4. That you had in your possession, on the premises where greyhounds are trained and kept, two (2) live possums for the purposes of being, or which might be reasonably be capable of being, or likely to be, used as bait, quarry or lure to entice or excite or encourage a greyhound to pursue it.

**Charge No. 3 of 5**

Local Racing Rule (LR) 42.18 (c) reads as follows:

42.18 Subject to 42.19 but without derogating from LR 42.13 to LR 42.15, it is a Serious Offence for a person to:

1. cause, procure, permit or allow a greyhound to pursue or attack any live animal, animal carcass or any part of an animal.

**Particulars of the Charge being:**

1. You are and were at all relevant times a breeder and public trainer licenced by Greyhound Racing Victoria (GRV) (licence number 1708) and a person bound by The Greyhounds Australasia Rules (GAR) and Local Racing Rules (LRR).

2. You were at all relevant times a person responsible for the care and supervision of the Greyhounds housed at your GRV registered kennelling premises, namely, 41 Fisheries Road, Devon Meadows Victoria 3977.

3. Between 1 August 2017 and 8 December 2017 you were the registered trainer of 'Merinda Hannah' (TDAJZ).

4. Between 1 August 2017 and 8 December 2017, you caused, permitted or allowed the greyhound 'Merinda Hannah' (TDAJZ) to pursue a live possum.

**Charge No. 4 of 5**

Greyhound Australasian Rules 86 (d), reads as follows:

A person (including an official) shall be guilty of an offence if the person GAR 86 (d) (d) being an owner, trainer, attendant or person having official duties in relation to greyhound racing, makes a false or misleading statement in relation to an investigation, examination, test or inquiry, or makes or causes to be made a falsification in a document in connection with greyhound racing or the registration of a greyhound;

**Particulars of the Charge being:**

1. That you are and were at all relevant times a breeder and public trainer licenced by Greyhound Racing Victoria (GRV) (licence number 1708) and a person bound by The Greyhounds Australasia Rules (GAR) and Local Racing Rules (LRR).

2. That you were at all relevant times a person responsible for the care and supervision of the Greyhounds housed at your GRV registered kennelling premises, namely, 41 Fisheries Road, Devon Meadows Victoria 3977.

3. That on 25 of October 2019, an inquiry was opened with you at 41 Fisheries Road, Devon Meadows Victoria 3977. The inquiry was in regard to you being in possession of live possums and being involved in live baiting.

4. That during this inquiry you made false and misleading statements as to your knowledge in that you stated:

CHAIRMAN - Is there anything on this property at the moment that would be in breach of race rules or have anything to do with live baiting in any shape or form?

DIVIRGILIO - No

CHAIRMAN - Nothing at all?

DIVIRGILIO - No

CHAIRMAN - Have you ever been involved in live baiting, mate?

DIVIRGILIO -No

CHAIRMAN - Nup

CHAIRMAN - Have you ever used any animals, possums, rabbits anything like that?

DIVIRGILIO - No

CHAIRMAN - No

CHAIRMAN - Do you have anything like that on the property at the moment?

DIVIRGILIO - No

MCLEAN - Can you speak up for the purposes of the audio recording

DIVIRGILIO - Oh Sorry. Oh. No.

(Later in the inquiry, prior to adjournment)

MCLEAN - Are there any possums on your property?

DIVIRGILIO - Shakes his head no

MCLEAN - Are you sure about that?

DIVIRGILIO - Shakes his head yes

MCLEAN - You don 't seem certain in that answer you give to me.

DIVIRGILIO - Of course I'm sure

MCLEAN - Really?

I have information to believe there may be a possum on your property, what would you say to that? Rin?

DIVIRGILIO - Not true

MCLEAN – Not true?

MCLEAN - So the possum in the cage, In the back of the ute that you just took out of there. Where's that gone now?

DIVIRGILIO – If there's one there it's not mine.

MCLEAN - Where is it on your property now?

DIVIRGILIO - I haven't got it. Told ya.

MCLEAN - Where is the possum that was in t e back of that ute?

DIVIRGILIO - I haven 't got any here.

5. The inquiry was recommenced on 25 of October 2019 after Investigative Stewards located two (2) live possums. During the recommenced inquiry, you admitted to lying to Investigative Stewards and stated your reason for lying was:

DIVIRGILIO - "I didn't want to dob someone in".

**Charge No. 5 of 5**

Local Racing Rule (LR) 42.18 (a) reads as follows: 42.18 Subject to 42.19 but without derogating from LR 42.13 to LR 42.15, it is a Serious Offence for a person to:

1. use in connection with greyhound training, education or preparation to race, or racing, any animal, animal carcass or any part of an animal whether as bait, quarry or lure, or to entice, excite or encourage a greyhound to pursue it or otherwise; or

**Particulars of the Charge being:**

1. You are and were at all relevant times a breeder and public trainer licenced by Greyhound Racing Victoria (GRV) (licence number 1708) and a person bound by The Greyhounds Australasia Rules (GAR) and Local Racing Rules (LRR).

2. You were at all relevant times a person responsible for the care and supervision of the Greyhounds housed at your GRV registered kennelling premises, namely, 41 Fisheries Road, Devon Meadows Victoria 3977.

3. On or about 28 January 2019, you used in connection with greyhound training, education or preparation to race, a live rabbit as bait, quarry or lure, to entice, excite or encourage the greyhound ‘Dealer Wins’ to pursue it.

**BEN DIVIRGILIO**

**Charge No.1 of 2**

Local Racing Rule LRR 42.23 reads as follows:

42.23 It is a Serious Offence to be:

(a) in any way directly or indirectly involved in committing, or knowingly concerned with, such conduct as set out in LR42.18. (added 14/06/2016)

(b) aid, abet, counsel procure any person to commit such conduct as set out in LR 42.18 (added 14/06/2016)

**Particulars of the Charge being:**

1. You are and were at all relevant times a breeder and public trainer licensed by Greyhound Racing Victoria (license number 37339) and a person bound by The Greyhounds Australasia Rules and Local Racing Rules.

2. You were at all relevant times a person responsible for the care and supervision of the Greyhounds housed at your GRV registered kennelling premises, namely, 835 Maffra Rosedale Road, Nambrok, Victoria 3847 (licensed premises).

3. On 25 of October 2019 the mobile phone belonging to Rinaldo DIVIRGILIO, a registered GRV participant was seized by Investigative Stewards and examined.

4. The examination of those text messages between you and Rinaldo Divirgilio establish that you were knowingly concerned with such conduct as set out in LR 42.18, the conduct being, the possession and the attempt to possess live animals by Rinaldo Divirgilio for the purpose of using or likely to be used as bait or lure to encourage a greyhound to pursue it. These messages include;

I. "If Emalline needs a bite got 2 here"

II. "He asked me if I knew someone who could give his dog a possum told him you can 't trust anyone"

III. 'Had a big one was very good gave him a rabbit today"

IV. "I agree he asked me if I could give him a hand with a possum a few days ago I bet it is for that dog"

**Charge No. 2 of 2**

Greyhounds Australasia Rule 86 (d) reads as follows:

GAR86 (d) it is a serious offence; being an owner, trainer, attendant or person having official duties in relation to greyhound racing, makes a false or misleading statement in relation to an investigation, examination, test or inquiry, or makes or causes to be made a falsification in a document in connection with greyhound racing or the registration of a greyhound;

**Particulars of the Charge being:**

1. You are and were at all relevant times a breeder and public trainer licensed by Greyhound Racing Victoria (license number 37339) and a person bound by The Greyhounds Australasia Rules and Local Racing Rules.

2. You were at all relevant times a person responsible for the care and supervision of the Greyhounds housed at your GRV registered kennelling premises, namely, 835 Maffra Rosedale Road, Nambrok, Victoria 3847 (licensed premises).

3. GRV Investigative Steward conducted inquiries with you on 25 October 2019 and on 7 November 2019 regarding your knowledge of any live baiting being conducted at Rinaldo Divirgilio's property.

4. During these inquiries you made a false statement to the Investigative Stewards, in that you stated you had no knowledge that live baiting was occurring at your father Rinaldo's property in Devon Meadows Chairman: Also, I asked you if there's anything you can add to whatever it was alleged, so in relation to live baiting, was there anything you could add and you said that there was nothing you could. Mr Divirgilio: No. Chairman: That you had no knowledge of live baiting? Mr Divirgilio: No. Chairman: Do you still stick by that? Mr Divirgilio: Yeah, I do.

**Pleas:** Rinaldo Divirgilio – Not Guilty to all charges.

Ben Divirgilio – Not Guilty to all charges.

**DECISION**

1. **RINALDO DIVIRGILO**

**1. BACKGROUND**

Mr Rinaldo Divirgilio, you have pleaded “Not Guilty” to three charges. Two other charges, namely Charges 1 and 3, were withdrawn. Charges 2, 4 and 5 remain. They could be summarised as follows.

Charge 2: LR 42.18 (b) – possession of an animal which could be used as bait to excite or encourage a greyhound to pursue it.

Charge 4: LR 86 (d) – making a false or misleading statement in relation to an investigation or enquiry.

Charge 5: 42.18 (a) – in connection with greyhound training, using an animal, carcass or part of an animal as a bait, quarry or lure to entice, excite, or encourage a greyhound. In the Particulars, there is reference to the dog, *Dealer Wins,* trained by your son, Mr Benjamin Divirgilio.

The charges have been laid against a background of the alleged illegal use of animals for live baiting, which took place at your property in Devon Meadows.

In these matters, Mr Damien Hannan of Counsel appeared on behalf of Greyhound Racing Victoria (“GRV”). A friend of yours, Mr Brian Selleck, who is not a lawyer, had leave to represent you. We say now that Mr Selleck did a particularly good job of addressing the issues, which were not always simple, and representing your interests.

**2. THE CASE FOR GRV**

The case for GRV could be summarised as follows.

At the relevant time, you were a licensed person and bound by the Rules. You were responsible for the premises at Devon Meadows, where you trained. On 25 October 2019, Stewards located three possum traps, containing two live possums, concealed on your premises. These possums were capable of being or likely to be used for exciting or encouraging greyhounds to pursue them. This practice is commonly referred to as “live baiting”, a term not specifically defined in the relevant Rules.

On 25 October 2019, a Stewards’ Inquiry into your being involved in the possession of live possums and in live baiting was commenced.

In relation to Charges 2 and 4, you initially falsely denied being involved in live baiting or having live possums on the premises. On that day, the Inquiry subsequently recommenced after Stewards had located two concealed live possums on the premises. You stated that your reason for lying was that you “didn’t want to dob someone in”.

In relation to Charge 5, the Stewards took your mobile phone. They allege that text messages between yourself and your son, Mr Benjamin Divirgilio, show that animals were being used by you in the training of greyhounds, and particularly in relation to the greyhound, *Dealer Wins*.

**3. YOUR CASE**

Points raised by Mr Selleck on your behalf largely focussed on Charges 2 and 5.

In relation to Charge 2, arguments were advanced by Mr Selleck concerning the method adopted by the Stewards in relation to their entry on your Devon Meadows property, and particularly into the house occupied by you on it. There is little argument but that the Stewards located live possums under the floorboards of an uncompleted part of the house. This was adjacent to the door giving access to the completed parts – what could be described as the front door.

The argument of Mr Selleck was that this incomplete area was in fact part of your house and that the Stewards had no right to be accessing it, uplifting floorboards and the like. This area was in fact part of the residence.

Little more was put before us in relation to Charge 4 – the false or misleading statements – save that some argument was advanced that went more to the question of penalty.

In relation to Charge 5, Mr Selleck focussed upon the unlikelihood of an experienced greyhound man such as yourself giving Dealer’s Choice, which, it is alleged, was actually on a drip on the day in question, an animal such as a rabbit or a possum after coming off that drip. It would be detrimental to the dog and all the work that had been put into it. Further, Mr Selleck said that many of the things that you say are deliberately sarcastic and do not accurately reflect the true situation.

Mr Selleck, in closing addresses, also referred to the difficulty which non-legal greyhound people have in understanding the Rules and their current application. He made other submissions that in reality related more to the question of penalty.

**4. FINDINGS**

We are comfortably satisfied that each of the charges has been made out.

Turning firstly to Charge 2, during the preliminary arguments concerning the status of the Devon Meadows house, we specifically ruled that this was your residence – see Transcript 16. The portion where the possums were found under the floorboards may have been incomplete, but was part of that residence.

However, we also ruled specifically, and continue so to rule, that the relevant proposed evidence of the Stewards is admissible. We referred to Section 138 of the Evidence Act 2008. Technically, it was improper for the Stewards to enter the area which they did, mistakenly believing that it was not part of the premises. It may well be that the Stewards should have obtained written permission to enter the premises, but we also accept from the video material that was shown that it would have been easy to form the mistaken belief that the area in question was not part of the premises. It would not seem to have been an issue which you raised at the time.

Once that issue is determined in the way that it has been, it is difficult to see how the charge could otherwise be dismissed. The possums were found, concealed on your property. There were false denials. Ultimately, you effectively made an admission.

In short, we find that Charge 2 has been proved to our comfortable satisfaction.

Charge 4 relates to the making of false or misleading statements, in breach of LR 86 (d). You falsely denied being involved in live baiting or having live possums on the premises. As earlier mentioned, you ultimately stated that you had done so because you “didn’t want to dob somebody in”.

Charge 4 has also been proven to our comfortable satisfaction.

We are also comfortably satisfied that Charge 5 is proven.

Text messages taken from your mobile phone and put in evidence clearly reveal that an animal, an animal part or a carcase was being used in the training of greyhounds, with particular reference to *Dealer Wins*.

In relation to *Dealer Wins*, we would refer specifically to the record of the mobile telephone messages between yourself and Mr Benjamin Divirgilio on 28 January 2019 as follows:

“Rinaldo to Benjamin: “Alright what about Dealer”.

Benjamin to Rinaldo: “Yes”.

Rinaldo to Benjamin: “Had a big one was very good gave him a rabbit today”.

Benjamin to Rinaldo: “Okay will pick him up Wednesday as well.”

A message of 11 April 2019 from yourself to Benjamin on 11 April 2019 is as follows:

“Kermy will be here soon and dropping off some furry friends”.

“Kermy” is the nick-name of another person who has been involved in these matters.

There are other examples in the text messages. Suffice to say that we are comfortably satisfied that Charge 5 has also been proven.

We now move on to the charges against Mr Benjamin Divirgilio.

**B. BENJAMIN DIVIRGILIO**

**1. BACKGROUND**

Mr Benjamin Divirgilio, you have pleaded “Not Guilty” to two charges. They could be summarised as follows.

Charge 1: LR 42.23 – knowingly concerned in conduct as set out in LR 42.18 – that is, possession and attempted possession of live animals to be used as bait or a lure to encourage a greyhound to pursue it.

Charge 2: LR 86 (d) – making a false or misleading statement to an investigation or enquiry.

These charges are laid against a background of the alleged use of animals for live baiting, which took place at the Devon Meadows property of your father, Mr Rinaldo Divirgilio.

In these matters, Mr Damien Hannan of Counsel appeared on behalf of Greyhound Racing Victoria (“GRV”). Mr Lynton Hogan of Counsel appeared on your behalf.

**2. THE CASE FOR GRV**

The case for GRV could be summarised as follows.

At the relevant time, you were a licensed person and bound by the Rules. You trained a considerable number of greyhounds at your establishment at Nambrok, in Gippsland. You and your partner are involved in the industry on a full-time basis. Your establishment is approximately a two-hour drive from your father’s property.

The Stewards visited your father’s property on 25 October 2019. Two concealed possums were found on that property. He was interviewed. Subsequently, and on the same day, you were interviewed by the Stewards at your property. A further interview was conducted on 7 November 2019 at the Warragul Greyhound Racing Club. Effectively, you denied having had anything to do with, or relevant knowledge of, possums or live baiting. This is a position which you have maintained throughout.

The Stewards rely substantially on the material obtained from Mr Rinaldo Divirgilio’s mobile phone, some of which is referred to above. They also rely on the damage done to your credit by reason of your repeated denials that *Dealer Wins* was ever at your father’s property at the relevant time, compared with your ultimate concession that it was. That relevant time was on 28 January 2019, when your father sent you the message, “Had a big one was very good gave him a rabbit today” (reference is made to the messages set out above in relation to Mr Rinaldo Divirgilio).

In defending Charge 1, you rely on assertions that your father effectively indulges in sarcasm and “rubbish” in his communications. However, this at least in part falls away by reason of the fact that, when the Stewards arrived at his property, there were in fact live possums concealed there.

If the Stewards are successful in relation to Charge1, Charge 2 is also made out. Given the factual background, a finding of guilt on Charge 1 must mean that the stewards must succeed on Charge 2 – the making of a false or misleading statement to an investigation.

**3. YOUR CASE**

Evidence was given by yourself and your partner, Ms Lyn Smith.

Submissions were made subsequently on your behalf by Mr Hogan. These could be summarised as follows.

The case advanced by GRV has been put in general terms and not specifics. There have been conclusions drawn and pre-judgement based on the father and son familial relationship. There is no video footage or oral evidence which implicates you.

For Charge 1 to succeed, the Particulars alleged must be established to the comfortable satisfaction of the Tribunal. Those Particulars are quite specific. They allege that you were knowingly concerned in live baiting in respect of *Dealer Wins* on a specific date, namely 28 January 2019. They allege that you organised the transporting of that dog to his Devon Meadows property for that purpose.

There is no, or no sufficient, evidence to make out that charge. The Particulars alleged must be proved – see *Gore v Australian Securities and Investments Commission* (2017) FCAFC 13. Further, it must be proved that you were an intentional participant in what occurred. The evidence does not establish that.

The Particulars of Charge 1 are narrow and specific. It must be proved that you had actual knowledge of the Particulars alleged in relation to what is said to have occurred to *Dealer Wins* at Devon Meadows on 28 January 2019. There is no such proof.

Further, the evidence of Ms Smith concerning the dog going to Devon Meadows for the purpose of administration of a drip was not challenged (This is only partially correct. Mr Hannan asked Ms Smith a series of questions about what had happened at Devon Meadows in relation to the drip and whether it had been administered. Essentially, she did not know).

There were also put in evidence documents establishing that your father had purchased drip equipment and substances a very short time before 28 January 2019. In addition, the dog’s previous and recent run, had been in very hot conditions.

The Particulars allege that a live rabbit was used as bait. There is no evidence of this. For the Charge to be made out, it has to be proven that you had prior knowledge of what was going to occur on 28 January 2019. Again, there is no such evidence.

Text messages concerning other greyhounds are not relevant. The Particulars confine Charge 1 to what occurred with *Dealer Wins* on 28 January 2019.

Turning to Charge 2, there are various matters that have to be proved before the Tribunal could be comfortably satisfied that this charge has been made out. That has not occurred.

The Particulars are constituted by a precise statement. It has to be established that there was live baiting being performed and not just that there were animals on the premises. It has to be proven that you had actual knowledge of what those animals were and what was occurring to them – namely, live baiting and not the use of dead animals. Your belief is also important. You believed that your father was speaking rubbish, as opposed to relaying to you true facts.

When all of the above is taken into account, the Tribunal could not be comfortably satisfied that either charge has been proved to the required level of comfortable satisfaction.

**4. THE BRIEF REPLY ON BEHALF OF THE STEWARDS**

The brief reply by Mr Hannan on behalf of the Stewards could be summarised as follows.

Firstly, the defence of both persons of Mr Rinaldo Divirgilio just being sarcastic or speaking rubbish may have been of more substance if live possums had not actually been found on the Devon Meadows premises.

Secondly, the term “live baiting” is not actually defined in the Rules, but is used in the generic sense.

Reference is made to the wording of LR 42.18 (a) concerning any animal or part of an animal used to entice or encourage a greyhound to pursue.

Whether or not the animal concerned was alive or dead makes no difference to the issue of whether the charge has been made out.

**5. FINDINGS**

We are comfortably satisfied that each charge has been made out.

Dealing firstly with Charge 1, the text messages between your father and yourself leave us in little, if any, doubt but that you were well aware of what was going on at Devon Meadows in 2018 and 2019.

We would point to the following messages from your father to you:

1. Re the dog *Come on Emmaline,* trained by you between 25 July 2018 and 29 November 2019 – “if Emmaline needs a bite…got two here”. This message was sent to you on 28 September 2018 and acknowledged by you.
2. Re the dog *Fernando’s Boy* – “given the dog a joey”. This message was sent to you on 22 January 2019 and acknowledged by you.
3. Re an unnamed dog, a message sent to you on 12 April 2019 reads – “he asked me if I could give him a hand with a possum a few days ago I bet it was for that dog”. Your response was “Yeah bet it was to”.
4. A message sent by your father to you on 11 April 2019 reads – “Kermy will be here soon dropping off some furry friends”. There is then a reference about getting drunk with Kermy. Within a minute, your response was “ha ha ha all good”.
5. There is also the message of 28 January 2019 from your father to you and which has already received some attention. This is in relation to the dog *Dealer Wins.* It reads “Had a big one was very good gave him a rabbit today”. You replied to that message virtually immediately, as earlier described.

We would also refer to your repeated denials that you had sent *Dealer Wins* to your father’s property at Devon Meadows at the relevant time, before finally admitting during this hearing that you had so sent the dog. It may be that it was going to be put on a drip whilst there, but in our opinion, this does not rule out the proposition that it was given a rabbit whilst it was there, as texted by your father and acknowledged by you.

However, your repeated denials of the dog going to Devon Meadows, before finally admitting that it did so go, do not assist you in this regard. Your denials to the Stewards had been not just repeated, but emphatic, such as “*Dealer Wins* never left the property, ever” and your stating that the only time that the dog left the property was to have hock surgery. The text messages make it clear that the dog did go to your father’s place at Devon Meadows at the time alleged and that you received a text message from him concerning the “rabbit today”, a message to which, within two minutes, you replied as follows:

“Okay will pick him up Wednesday as well”.

We are quite satisfied that *Dealer Wins* went to Devon Meadows as alleged; that it was given a rabbit by your father; that it was “very good”; that you were so informed: and that you replied immediately.

In addition, we would refer to the following questions and answers found in the transcript of the Stewards interview with you on 7 November 2019. These are in relation to *Dealer Wins* and your father’s text message of 28 January 2019:

“Chairman (of Stewards); I suppose just on that as well is there any other way to…”Got a big one it was very good gave him a big rabbit today”?

Mr Divirgilio: Well, obviously he’s given him a big rabbit.

Chairman: Can…?

Mr Divirgilio: That’s the way I read it, like a big rabbit of some sort.

Chairman: Yeah.

Mr Divirgilio: He does… he does talk, say a lot of stuff that he doesn’t do. You know what I mean? I’m not talking about that but other things.

Chairman: Why would he say he’s live baiting or inferring that when he’s not? I can’t understand that.

Mr. Divirgilio: I don’t understand it either.

In relation to *Come on Emmaline*, you denied to the Stewards that you ever received your father’s text message of 28 September 2018 as set out in (i) above. However, it seems apparent that you did and acknowledged receipt of that text message. It seems to be a fairly explicit message.

Indeed, it appears from the text messages that at least 13 dogs were taken by or for you to Devon Meadows in the 2017-19 period.

The Charges and their Particulars have been made clear for a lengthy period. We are not of the view that the Particulars and the precision of their wording should be restricted in the way argued for by Mr Hogan. The nature and details of the Charges against you have been clear throughout. The Charges were laid on 24 February 2020. Their wording and that of the Particulars contained in them have remainedvirtually unchanged. Any ancillary matters which provide context have been spelled out. Details of documents or text messages have been specified. No surprises in relation to the Charges have been introduced during the hearing itself.

In summary, we prefer and accept the evidence introduced by the Stewards. We are comfortably satisfied that Charge 1 has been proven.

We turn now to Charge 2. Given our findings in relation to Charge 1, it seems to us to be virtually inevitable that we also find Charge 2 to be proven. In any event, we are comfortably satisfied that it has been so proven.

We find that your repeated denials to the Stewards of any knowledge of what was occurring at Devon Meadows were false. Specifically, your repeated denials in regard to *Dealer Wins* ever going to Devon Meadows were false and not corrected until during the conduct of the hearing. Your ultimate description and denials as to knowing what occurred there in relation to the dog were false.

You received the message from your father as to the dog being given a rabbit and, within two minutes replied “Okay”.

In short, we are comfortably satisfied that Charge 2 has been proven.

**6. CONCLUSION**

In relation to Mr Rinaldo Divirgilio, we are comfortably satisfied that the three Charges, being Charges 2, 4 and 5, have been proven. We find him guilty on each Charge.

In relation to Mr Benjamin Divirgilio, we are comfortably satisfied that both Charges 1 and 2 have been proven. We find him guilty on each Charge.

We shall hear the parties on the question of penalty on a convenient date to be fixed.

Mark Howard  
Registrar, Victorian Racing Tribunal