31 March 2022

**DECISION**

**RACING VICTORIA**

**and**

**FRANCIS FINNEGAN**

**Date of hearing:** 21 February 2022 and 22 February 2022.

**Panel:** Judge John Bowman (Chairperson) and Mr Des Gleeson.

**Appearances:** Mr Justin Hooper, instructed by Mr Scott Hunter appeared on behalf of the Stewards.

Mr Finlay Davies represented Mr Francis Finnegan.

**Charges and particulars:**

**Charge One: AR 232(i)**

Australian Rule of Racing (“AR”) 232(i) which reads as follows:

***AR 232 Failure to observe processes and directions of PRAs or Stewards***

*A person must not:*

1. *(i) give any evidence at an interview, investigation, inquiry, hearing and/or appeal which is false or misleading.*

**Particulars of Charge One**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. You are, and were at all relevant times, the trainer of *No Frontiers*.
3. On 3 May 2020, during the course of a Stewards Inquiry, you gave evidence to the effect that the decision to jump out *No Frontiers* in Heat 7 of the 20 April 2020 Jump Outs at the Cranbourne Training Centre was a spur of the moment decision.
4. On 15 April 2020, you decided to jump out *No Frontiers* in Heat 7 of the 20 April 2020 Jumps Outs at the Cranbourne Training Centre (i.e. five days before the jump out).
5. On 5 June 2020, during the course of a Stewards Inquiry, when asked whether you had asked licensed jockey Ben Thompson to delete any information from his phone, you gave evidence to the effect that you would not have asked anyone to delete anything and/or you had not asked Mr Thompson to delete information from his phone.
6. On 2 June 2020, during the course of a Stewards Inquiry, licensed jockey Ben Thompson told the Stewards that you had asked him to delete messages between yourselves.
7. You provided false and/or misleading evidence in contravention of AR 232(i) on the basis of:
	1. particulars 3 and 4 (i.e. you provided false and/or misleading evidence with respect to the time you decided to jump out *No Frontiers*); and/or
	2. particulars 5 and 6 (i.e. you provided false and/or misleading evidence with respect to whether you told Ben Thompson to delete information from his phone).

**Charge Two: AR 228(b)**

AR 2228(b) which reads as follows:

***AR 228 Conduct detrimental to the interests of racing***

*A person must not engage in:*

1. *(b) misconduct, improper conduct or unseemly behaviour;*

**Particulars of Charge Two**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. You are, and were at all relevant times, the trainer of *No Frontiers*.
3. On 3 May 2020*, No Frontiers* ran in and won The Long Paddock 3YO Maiden Plate over 1000 metres at the Bairnsdale Racecourse.
4. Sometime between 3 May 2020 and 11 May 2020, you deleted from your mobile phone, messages and/or call records (between you and Licensed Jockey Ben Thompson and/or between you and Apprentice Jockey Carleen Hefel) that were or could be relevant to the inquiry being conducted by the Stewards into *No Frontiers’* race on 3 May 2020 and/or its previous jump outs.
5. Your conduct, as outlined in particular 4 constitutes misconduct and/or improper conduct.

**Charge Three: AR 227(b)**

AR 2227(b) which reads as follows:

***AR 227 Breaches of the Rules***

*Without limiting any other powers, a PRA or the Stewards may penalise any person who:*

*(b) attempts to commit, aids, abets, counsels, procures, connives at, approaches or requests another person to commit, conspires with another person to commit, or is a party to another person who commits, a breach of the Rules.*

**Particulars of Charge Three**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. You are, and were at all relevant times, the trainer of *No Frontiers*.
3. On 3 May 2020*, No Frontiers* ran in and won The Long Paddock 3YO Maiden Plate over 1000 metres at the Bairnsdale Racecourse.
4. Sometime between 3 May 2020 and 11 May 2020, licensed jockey Ben Thompson deleted from his mobile phone, messages and/or call records between you and him that were or could be relevant to the inquiry being conducted by the Stewards into *No Frontiers’* race on 3 May 2020 and/or its previous jump outs.
5. Sometime between 3 May and 11 May, 2020, you approached, requested and/or were a party to Mr Thompson undertaking the action outlined in particular 4.
6. Your conduct, as outlined in particular 5 constitutes a breach of AR 227(b).

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

AR 229(1)(a) which reads as follows:

**AR 229 Corruption, dishonesty and misleading behaviour**

1. *A person must not:*

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

**Particulars of Charge Four:**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. You are, and were at all relevant times, the trainer of *No Frontiers*.
3. On 3 May 2020*, No Frontiers* ran in and won The Long Paddock 3YO Maiden Plate over 1000 metres (**the race**) at the Bairnsdale Racecourse.
4. On 23 March 2020, you jumped out *No Frontiers* in Heat 5 of the Jump Outs at Cranbourne Training Centre knowingly under the name of *Avozinha*, another horse trained by you.
5. On 6 April 2020, you jumped out *No Frontiers* in Heat 11 of the Jump Outs at Cranbourne Training Centre knowingly under the name of *Getemhel*, another horse trained by you.
6. On 20 April 2020, you jumped out *No Frontiers* in Heat 7 of the Jump Outs at Cranbourne Training Centre knowingly under the name of *Getemhel*, another horse trained by you.
7. You undertook the conduct in particulars 4, 5 and 6:
	1. to assess *No Frontiers’* capabilityto compete against other horses;
	2. to conceal from the broader betting market *No Frontiers’* true capability to complete;
	3. in order to eventually race the horse and make a profit from betting on it through yours and/or others’ accounts (which you did when it ran in the race).
8. Your conduct, as outlined in particular 8 constitutes dishonest, fraudulent, improper and/or dishonourable action or practice in connection with racing.

**Charge Five: AR 229(1)(f) (Alternative to Charge Four)**

AR 229 which reads as follows:

**AR 229 Corruption, dishonesty and misleading behaviour**

*(1) A person must not:*

*(f) if the person is an owner, nominator, or trainer of a horse – enter or run the horse in any race, official trial, or jump-out under a fraudulently false description;*

**Particulars of Charge Five:**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. You are, and were at all relevant times, the trainer of *No Frontiers*.
3. On 23 March 2020, you jumped out *No Frontiers* in Heat 5 of the Jump Outs at Cranbourne Training Centre knowingly under the name of *Avozinha*, another horse trained by you.
4. On 6 April 2020, you jumped out *No Frontiers* in Heat 11 of the Jump Outs at Cranbourne Training Centre knowingly under the name of *Getemhel*, another horse trained by you .
5. On 20 April 2020, you jumped out *No Frontiers* in Heat 7 of the Jump Outs at Cranbourne Training Centre knowingly under the name of *Getemhel*, another horse trained by you.
6. In contravention of AR 229(1)(f), you ran a horse in a jump out under a fraudulently false description 23 March 2020, 6 April 2020 and/or 20 April 2020.

**Pleas:** Not Guilty to charges 1 and 4.

 Guilty to charges 2 and 3.

**DECISION**

Mr Francis Finnegan, the Stewards have laid four charges against you, all involving the horse *No Frontiers,* of which you were the trainer at all relevant times. The charges centre upon a Jump Out at Cranbourne on 20 April 2020, in which *No Frontiers,* ridden by Mr Ben Thompson, participated, and upon The Long Paddock 3yo Maiden Plate at Bairnsdale on 3 May 2020. *No Frontiers* won that race.

The four charges could be summarised as follows:-

Charge 1 – a breach of AR 232 – the giving of false or misleading evidence to the Stewards at an interview, investigation, inquiry or the like. This charge focusses upon the circumstances surrounding the jump out of 20 April 2020 and subsequent telephone conversations with Mr Thompson relating to the deletion of information from his phone.

Charge 2 – a breach of AR 228 (b) – engaging in false or improper conduct. This charge relates to deletions from your mobile phone of messages and the like between you and Mr Thompson and apprentice Ms Carleen Hefel. It is asserted that these deletions could have been related to the inquiry into the Bairnsdale race.

Charge 3 – a breach of AR 229 (1)(a) – attempting to commit, aid, abet, or the like another person to commit a breach of the Rules. This also relates to the deletion of the messages and like material from his phone by Mr Thompson between 3 May 2020 and 11 May 2020.

Charge 4 – a breach of AR 229 (1)(a) – engaging in dishonest, corrupt, fraudulent, improper or dishonourable action in connection with racing. It is asserted that *No Frontiers* participated in the Jump Outs at Cranbourne on 23 March, 6 April and 20 April 2020 under a false name and so as to conceal the true identity of that horse. This is alleged to have resulted in the making of a profit through betting accounts.

You have pleaded not guilty to charges 1 and 4, but guilty to charges 2 and 3, the charges relating to the deletion of mobile phone material.

In this decision, we are dealing solely with charges 1 and 4. We say now that we regard charge 4 as being potentially the most serious of the charges.

We now turn to charge 1. We say now that we are comfortably satisfied that you are guilty of this charge.

The essential ingredients of the charge have been proven. Firstly, you gave evidence to the Stewards that the decision to jump out *No Frontiers*  in Heat 7 of the Cranbourne Jump Outs on 20 April was a “spur of the moment“ decision. However, it is quite clear to us, and we accept that you had engaged Mr Thompson to ride the horse in the Jump Out on 15 April, five days before the event. We would refer to the evidence given by Mr Thompson to the Stewards, which we accept. Further, you did not seek to cross-examine Mr Thompson or otherwise put before us any evidence disputing his evidence. In addition, the whole sequence of events is not consistent with a “spur of the moment” decision to start the horse in the Jump Out.

Secondly, on 5 June 2020 you told the Stewards that you had not asked anyone, and not Mr Thompson, to delete information from a phone. Mr Thompson told the Stewards that you had asked him to delete messages between himself and yourself. Again, you did not seek to cross-examine him or put before us any evidence to the contrary. Indeed, you have pleaded guilty to charge 3, an ingredient of which is that between 3 May and 11 May 2020 you approached, requested and/or were a party to Mr Thompson deleting potentially relevant material from his phone.

When we weigh up all of the above, we are comfortably satisfied that charge 1 has been proven.

We turn now to charge 4. We are also comfortably satisfied that this charge has been proven.

In relation to this charge, the essential ingredients are as follows. On 23 March 2020 you jumped out *No Frontiers* at Cranbourne under the name of *Avozinha*, another horse trained by you. On 6 April 2020, you jumped out *No Frontiers* under the name of *Getemhel,* also trained by you. Finally, and as discussed, again on 20 April 2020 you jumped out *No Frontiers* under the name of *Getemhel.* It is asserted that you undertook this conduct so as to test the ability of *No Frontiers* and conceal that ability from the broader betting public. This was in order to make a profit from betting. It is alleged that this constitutes dishonest, fraudulent, improper and dishonourable action or practice. We agree.

That you did make a profit is indisputable. The bets were placed in accounts in your wife’s name. We would add that she is a licensed stablehand and track work rider. Her normal bets are in the order of $100. She had $3,000 on the horse. You are an occasional punter, sometimes betting $100. You had $1,000 on it. Thus, in her accounts $4,000 was placed on *No Frontiers* and the odds obtained seem to have been in the vicinity of 14/1.

Your defence to the Stewards’ assertion that you ran *No Frontiers* under incorrect names in three Jump Outs at Cranbourne seems to amount to the proposition that these are more or less informal events and horses frequently run under a wrong name. The Stewards strongly rejected this and we do not accept it.

In our opinion, this was a carefully planned and successful attempt to deceive the betting public and usually well informed observers as to the true ability of *No Frontiers* and to bring off a betting coup. Subsequently, you tried to cover your tracks by attempting to remove any phone material that might be incriminating.

The bottom line is that we are comfortably satisfied that charge 4 has been made out. Thus, we find you guilty of charges 1 and 4.

We shall hear submissions on penalty in relation to the four charges at a convenient time, noting that submissions in relation to the charges 2 and 3, to which you have pleaded guilty, were to be heard on 4 April 2022.

Mark Howard
Registrar, Victorian Racing Tribunal