18 September 2020

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**MR JOE BAJADA**

**Date of hearing:** 7 September 2020

**Panel:** Judge John Bowman (Chairperson) and Judge Graeme Hicks (Deputy Chairperson).

**Appearances:** Mr Andrew Cusumano appeared on behalf of the Stewards.

Mr Rob O’Connell appeared on behalf of Mr Bajada.

**Charges:** Australian Harness Racing Rule (AHRR) 193(1) states a person shall not attempt to stomach tube or stomach tube a horse nominated for a race or event within 48 hours of the commencement of the race or event.

 AHRR 187(6) states a person shall not frustrate or endeavour to frustrate an inquiry or investigation.

 AHRR 187(2) states a person shall not refuse to answer questions or to produce a horse, document, substance or piece of equipment, or give false or misleading evidence or information at an inquiry or investigation.

 AHRR 196(C)(1)(b) states A person must not administer an alkalinising agent in any manner to a horse which is engaged to run in a race:

(b) at any time within one (1) clear day of the commencement of the race.

AHRR 190(B) states

(1) A trainer shall at all times keep and maintain a log book:-

(a) Listing all therapeutic substances in his or her possession;

(b) Recording all details of treatment administered to any horse in his or her care and including as a minimum requirement:

(i) the name of the horse

(ii) the date of administration of treatment

(iii) the name of the treatment (brand name of active constituent)

(iv) the route of administration

(v) the amount given

(vi) the name and signature of the person or persons administering and/or authorising the treatment.

**Particulars of charges:**

**Charge 1**

1. On 20 June 2020, the horse ‘Upanatom NZ’ was engaged to compete in Race 8 at the Tabcorp Park Melton harness racing meeting that night;

2. At the relevant time you were a licensed Grade B Trainer and the registered trainer of ‘Upanatom NZ’;

3. On 20 June 2020, at approximately 5:04pm, HRV Stewards observed you attempt to stomach tube the horse ‘Upanatom NZ’ at your registered training address located at 207 Troups Road South, Mount Cottrell, Victoria;

4. You attempted to stomach tube the horse ‘Upanatom NZ’, a horse nominated for a race, within 48 hours of the commencement of that race.

**Charge 2**

1. At all relevant times you were a licensed Grade B Trainer;

2. On 20 June 2020, the horse ‘Upanatom NZ’ was engaged to compete in Race 8 at the Tabcorp Park Melton harness racing meeting that night;

3. On 20 June 2020, at approximately 5:04pm, HRV Stewards observed you attempt to stomach tube the horse ‘Upanatom NZ’ at your registered training address located at 207 Troups Road South, Mount Cottrell, Victoria;

4. Whilst being questioned by HRV Investigative Steward Stephen Svanosio you deliberately kicked a blue bucket containing a black funnel, large plastic spoon and a liquid resulting in the contents spilling;

5. After initially kicking the blue bucket resulting in the contents spilling you deliberately kicked it on a second occasion;

6. By conducting yourself in such a way you endeavoured to frustrate the HRV Stewards investigation into the attempted stomach tubing of ‘Upanatom NZ’.

**Charge 3**

1. At all relevant times you were a licensed Grade B Trainer and the registered trainer of ‘Upanatom NZ’;

2. On 20 June 2020, HRV Stewards observed you attempt to stomach tube ‘Upanatom NZ’ at your registered training address located at 207 Troups Road South, Mount Cottrell, Victoria;

3. On 20 June 2020, you gave evidence that the horse you were observed to have attempted to stomach tube was not ‘Upanatom NZ’, which was engaged in Race 8 at the Tabcorp Park Melton harness racing meeting that night;

4. You gave this evidence knowing it to be false as the horse you attempted to stomach tube was ‘Upanatom NZ’.

**Charge 4**

1. At all relevant times you were a licensed Grade B Trainer and the registered trainer of ‘Upanatom NZ’;

2. On 20 June 2020, HRV Stewards observed you attempt to stomach tube ‘Upanatom NZ’ at your registered training address located at 207 Troups Road South, Mount Cottrell, Victoria;

3. On 20 June 2020, you gave evidence that you had inserted a stomach tube into the nostril of ‘Upanatom NZ’ with no intention of administering any substance to ‘Upanatom NZ’ via this stomach tube;

4. You gave this evidence knowing it to be false, in that the stomach tube was inserted into the nostril of ‘Upanatom NZ’ for the purpose of administering a liquid contained in a blue bucket positioned nearby.

**Charge 5**

1. At all relevant times you were a licensed Grade B Trainer and registered trainer of ‘Upanatom NZ’;

2. On 20 June 2020, HRV Stewards observed you attempt to stomach tube ‘Upanatom NZ’ at your registered training address located at 207 Troups Road South, Mount Cottrell, Victoria;

3. On 20 June 2020, you gave evidence that the liquid contained within a blue bucket positioned nearby, as you attempted to stomach tube ‘Upanatom NZ’, contained horse manure, water and soap and was being used for the purpose of cleaning ‘Upanatom NZ’;

4. Subsequent analysis of this liquid by Racing Analytical Services Limited revealed the presence of alkalinising agents;

5. You gave this evidence knowing that the liquid within the blue bucket contained alkalinising agents and was intended to be administered to ‘Upanatom NZ’.

**Charge 6**

1. On 12 June 2020, the horse ‘Upanatom NZ’ was engaged to compete in Race 5 at the Tabcorp Park Melton harness racing meeting that night;

2. At the relevant time you were a licensed Grade B Trainer and the registered trainer of ‘Upanatom NZ’;

3. On 20 June 2020, you gave evidence you had administered 30 grams of sodium bicarbonate to ‘Upanatom NZ’ via its feed on 11 June 2020;

4. You administered an alkalinising agent to ‘Upanatom NZ’ within one (1) clear day of its engagement at the Tabcorp Park Melton race meeting on 12 June 2020.

**Charge 7**

1. On 20 June 2020, the horse ‘Upanatom NZ’ was engaged to compete in Race 8 at the Tabcorp Park Melton harness racing meeting that night;

2. At the relevant time you were a licensed Grade B Trainer and the registered trainer of ‘Upanatom NZ’;

3. On 20 June 2020, you gave evidence you had administered 30 grams of sodium bicarbonate to ‘Upanatom NZ’ via its feed on 19 June 2020;

4. You administered an alkalinising agent to ‘Upanatom NZ’ within one (1) clear day of its engagement at the Tabcorp Park Melton race meeting on 20 June 2020.

**Charge 8**

1. At all relevant times, you were a licensed Grade B trainer with Harness Racing Victoria;

2. On 20 June 2020, you gave evidence that on the day prior to the races of ‘Upanatom’ on 12 June 2020 and 20 June 2020, you administered an alkalinising agent, namely sodium bicarbonate, to a horse in your care;

3. When inspected by HRV Stewards on 20 June 2020, your log book failed to adequately record these treatments;

4. You have failed to keep and maintain a log book as required.

**Pleas:** Not Guilty

**DECISION**

Mr Joseph Bajada, you have pleaded ‘not guilty’ to breaching the following Australian Harness Racing Rules. Charge 1 - Rule 193(1), attempting to stomach tube a horse within 48 hours of the commencement of a race. Charge 2 - Rule 187(6), frustrating an enquiry or investigation. Charges 3, 4 and 5 - Rule 187(2), giving false or misleading evidence. Charges 6 and 7 - Rule 196(C)(1)(b), administering an alkalinising agent within one clear day of the commencement of a race. Charge 8 – Rule 190(B), not keeping proper logbooks on 12 and 20 June 2020.

You were at all relevant times the registered trainer of the horse ‘Upanatom’. On Saturday, 20 June 2020 you had entered Upanatom in Race 8 at the Tabcorp Park Melton Harness race meeting. Shortly prior to the race on 20 June 2020, Stewards conducted surveillance at your training premises. Whilst conducting surveillance, Steward Mr Stephen Svanosio observed you tie up a horse at your tie-up area and observed you to hold what appeared to be stomach tubing equipment.

Upon such observations, Mr Svanosio and another Steward, Mr Daniel Borg, commenced to approach the tie up area. Whilst doing so both Stewards activated their body worn cameras.

As Mr Svanosio approached the tie up area, he observed you at the head of the horse with one end of the stomach tube in your mouth and the other end in the nostril of the horse. Mr Svanosio observed that the tube was not entirely inserted into the horse’s nostril, but was certainly partly inserted into such nostril. Upon Mr Svanosio alerting you of his presence, you withdrew the stomach tube from the horse’s nostril.

At your premises, you were questioned by Mr Svanosio if the horse was Upanatom and you stated that it was not. Stewards then stated to you that the brand would be examined, whereupon you admitted that the horse was actually Upanatom.

You stated to the Stewards that you were not intending to stomach tube the horse. You stated that you had some spare time and that you would see if you could drench the horse, as you had tried to drench the horse on another day and it was very difficult.

Positioned directly beside you in the tie up area was a blue bucket containing a black funnel, a large plastic spoon and liquid. Stewards observed you kick over the blue bucket, whilst they were talking to you. Despite liquid spilling out of the blue bucket, there was sufficient liquid still remaining in the bucket to be collected for analysis. You denied that you had deliberately kicked over the blue bucket and that said that it was an accident. The video evidence taken by both Stewards was shown to the Tribunal and was tendered as an exhibit.

You were subsequently interviewed at an enquiry held by the Stewards on 20 June 2020 at harness racing headquarters, Tabcorp Park Melton. You again told Stewards that you wanted to see if you could put the hose in the nostril of the horse, as you had some spare time and you were unable to drench the horse in the past. You admitted to the Stewards that the tube was a little way into the nostril of the horse. You admitted also to the Stewards that you had the tube in your mouth at the other end.

You stated to the Stewards that the bucket contained only water, soap and mud. You told the Stewards that the bucket did not contain an alkalising agent. The liquid from the blue bucket was subsequently analysed on 29 June 2020 and was found to contain an alkalising agent – see the result of the analysis in respect of charges three, four and five. The Stewards alleged that you gave false or misleading evidence to them whilst at your premises.

With respect to charges six and seven, it is alleged that you administered an alkalising agent to Upanatom within one clear day of when it was due to race. With respect to charge eight it is alleged that you did not keep proper logbooks.

The facts in this case are not largely in dispute. You admitted before this Tribunal, that at the time the Stewards arrived at your premises you had one end of the hose in the horses nostril and the other end in your mouth. You do not dispute that there was a blue bucket and a funnel close by and that on analysis the blue bucket contained an alkalising agent.

You told the Stewards and this Tribunal that you had no intention to stomach tube Upanatom. You told the Stewards that the reason why you had the hose in the horses nostril and the other end in your mouth was because you had some spare time on your hands and you just wanted to see if you could drench the horse, as you had previously tried to drench the horse unsuccessfully. You told the Stewards and this Tribunal that the reason why you lied to the Stewards, saying that the horse in question was not Upanatom, was because you were nervous due to the Stewards screaming at you.

As to the allegation that you deliberately kicked over the blue bucket, you told Stewards that it was an accident. You told Stewards that the bucket contained only water, soap and mud. You also told this Tribunal that, if there was any alkalising agents in the bucket, that would have been because earlier that day you had drenched another horse with that bucket and it still may have contained some alkalising agent.

With respect to charges six and seven, you admitted at the Stewards enquiry that you had administered on 12 June and 20 June 2020 30g of sodium bicarbonate to Upanatom within one clear day of when it was to race. You told this Tribunal you were confused as to when you are able to administer an alkalising agent to a horse before it races.

With respect to charge eight, you admitted before the Tribunal that the appropriate logbooks were not kept up to date.

We are comfortably satisfied in all the circumstances before us that you are guilty of all charges. When the Stewards arrived at your premises, you had one end of the hose in the nostril of the horse and the other end in your mouth. You had a blue bucket within close proximity that contained an alkalising agent. You lied to the Stewards on their arrival when you said that the horse was not Upanatom. You gave a fanciful explanation when you said that, as you had spare time shortly prior to when the horse was due to race, you just wanted to see if you could drench it as you had not been able to do so before. Your logbooks recorded that you had in fact drenched Upanatom on two occasions in the past. You told this Tribunal that there was a mistake in your logbooks and that you meant to write the word ‘drip’ not ‘drench’. We do not accept your explanations. (Charge one)

The video taken by Stewards upon their arrival at your premises clearly shows that you deliberately kicked the blue bucket over. (Charge two)

We find charges one and two proven to the relevant standard. In our opinion you were caught red handed in attempting to stomach tube Upanatom.

We find to the relevant standard that you did give false evidence to the Stewards by stating that the horse in question was not Upanatom. (Charge three)

We find that you gave false or misleading information to the Stewards by saying that you had no intention to stomach tube Upanatom. (Charge four)

We find that you gave false or misleading evidence when you told the Stewards that the blue bucket only contained manure water and soap. (Charge five)

In respect of charges six and seven, you admitted to the Stewards at the enquiry held later that night at Tabcorp Park Melton that you did administer 30g of an alkalising agent to Upanatom, both on 12 June and 20 June, within one clear day of when it was due to race. We find charges six and seven proven to the relevant standard.

With respect to charge eight, you admitted to Stewards that your logbook was not kept up to date. We find such charge proven to the relevant standard.

**PENALTY**

Mr Joseph Bajada, you have been found guilty of eight breaches of the Australian Harness Racing Rules. You pleaded ‘not guilty’ to what could be described as the principal charges, being charges 1 to 7. You admitted that you have not kept your logbook up to date, which relates to charge 8. We will treat that as a guilty plea. On the charges to which you have pleaded ‘not guilty’, this removes any discount or lesser penalty that may have been available for a guilty plea.

In relation to your background and circumstances, you are almost 72 years of age. You and your wife live in a house some considerable distance from the location where your horses are stabled and are trained.

You have been involved with horses for effectively all of your working life. Your wife has also been greatly interested and, as we understand it and as explained by Mr O’Connell on your behalf, she has two broodmares about to foal and a two year old. She has an interest in a couple of thoroughbreds which are in Sydney and leased out on the basis of her not paying training fees. As a harness racing trainer, you have only had 36 runners in the last 3 years. Thus, your actual involvement has not been great.

In relation to your personal circumstances, you are having and have had a battle with cancer. We accept that you have had a lot of health problems in the last 3 years.

You do have a prior conviction for the very offence involved in charge one – stomach tubing. On 15 September 2016 you were disqualified for 12 months, a disqualification period that was upheld on appeal. Obviously, that is highly relevant.

The principal offences of which you have now been convicted have the potential to undermine public confidence in the integrity of harness racing. The evils of stomach tubing are well known, and must have been known to you, given your prior conviction.

Attempts to gain an unfair advantage and to make the Stewards life more difficult by telling them a litany of falsehoods deserves stern punishment, and particularly so when there has been a prior offence for stomach tubing only 3 years ago. The penalties at which we have arrived are as follows.

Charge 1 – attempting stomach tubing – disqualification for 2 years.

Charge 2 – frustrating an enquiry – the kicking over of the bucket and repeated lying about it – disqualification for 1 year cumulatively upon charge 1.

Charge 3 – false or misleading evidence, which you quickly corrected – fined $100.

Charge 4 – false or misleading evidence – in relation to the insertion of the stomach tube – fined $700.

Charge 5 – false or misleading evidence concerning the contents of the bucket – fined $700

Charge 6 – administration of bicarbonates on 11 June 2020 – fined $2,250

Charge 7 – administration of bicarbonates on 19 June 2020 – fined $2,250

Charge 8 – failure to maintain logbook (for the second time) – fined $350

Those brief descriptions are solely for the purpose of identifying the charges.

The end result is a total period of disqualification of 3 years and fines totalling $6,350.

Upanatom is disqualified as a runner in Race 5 at Tabcorp Park Melton on 12 June 2020 and the finishing order amended accordingly. Any prize money is to be refunded.

Mr O’Connell is thanked for his assistance to Mr Bajada and to the Tribunal.

Mark Howard
Registrar, Victorian Racing Tribunal