18 November 2019

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**MR JUSTIN TORNEY**

**Date of hearing:** 18 November 2019

**Panel:** Judge John Bowman (Chairperson), Ms Heidi Keighran and Mr Des Gleeson.

**Appearances:** Mr Stephen Svanosio appeared on behalf of the Stewards.

Mr Ian Kitchin represented Mr Justin Torney.

**Charges:** Australian Harness Racing Rule 241 states a person shall not in connection with any part of the harness racing industry do anything which is fraudulent or corrupt.

Australian Harness Racing Rule 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.

**Particulars of charges:** Charge 1

1. On 9 February 2019, you submitted a *Notification of Surrender of Lease* form (“the form”) to Harness Racing Victoria for the horse ‘Macray Macchiato’;
2. On the front page of the form, you entered information and signed under the name of ‘John Archibald’, without his authority to do so;
3. You committed a fraudulent act by submitting a *Notification of Surrender of Lease* form on which you forged the signature of John Archibald.

Charge 2

1. On 15 February 2019, you had a phone conversation with HRV Investigative Steward Stephen Svanosio in relation to your knowledge of a *Notification of Surrender of Lease* form (“the form”), dated 8 February 2019, relating to the horse ‘Macray Macchiato’;
2. During this phone call, you stated that John Archibald signed the form and provided it to you along with the horse ‘Macray Macchiato’ in mid-January 2019;
3. You gave this evidence knowing it to be false, in that you forged the signature of John Archibald prior to delivering the form to the HRV Stewards on 9 February 2019.

Charge 3

1. On 18 February 2019, you had a phone conversation with HRV Investigative Steward Stephen Svanosio in relation to your knowledge of a *Notification of Surrender of Lease* form (“the form”), dated 8 February 2019, relating to the horse ‘Macray Macchiato’;
2. During this phone call, you stated that John Archibald signed the form and provided it to you along with the horse ‘Macray Macchiato’ in mid-January 2019;
3. You gave this evidence knowing it to be false, in that you forged the signature of John Archibald prior to delivering the form to the HRV Stewards on 9 February 2019.

Charge 4

1. On 19 February 2019, you were interviewed by HRV Stewards in relation to your knowledge of a Notification of Surrender of Lease form (“the form”), dated 8 February 2019, relating to the horse ‘Macray Macchiato’;
2. During this interview, you stated that you sent the form by mail to John Archibald’s address in Mildura;
3. You gave this evidence knowing it to be false, in that the form wasn’t sent to Mr Archibald’s address in Mildura.

Charge 5

1. On 19 February 2019, you were interviewed by HRV Stewards in relation to your knowledge of a *Notification of Surrender of Lease* form (“the form”), dated 8 February 2019, relating to the horse ‘Macray Macchiato’;
2. During this interview, you stated that the form accompanied ‘Macray Macchiato’ when that horse was delivered by horse transport to your stable address;
3. You gave this evidence knowing it to be false, in that the form didn’t accompany ‘Macray Macchiato’ when that horse was delivered by horse transport to your stable address.

Charge 6

1. On 19 February 2019, you were interviewed by HRV Stewards in relation to your knowledge of a Notification of Surrender of Lease form (“the form”), dated 8 February 2019, relating to the horse ‘Macray Macchiato’;
2. During this interview, you stated that you did not at any stage see the information on the form;
3. You gave this evidence knowing it to be false, in that you entered information onto the form.

Charge 7

1. On 19 February 2019, you were interviewed by HRV Stewards in relation to your knowledge of a *Notification of Surrender of Lease* form (“the form”), dated 8 February 2019, relating to the horse ‘Macray Macchiato’;
2. During this interview, you stated that you didn’t fill out any of the information on the form;
3. You gave this evidence knowing it to be false, in that you entered information onto the form.

**Plea:** Guilty to all charges

**DECISION**

Mr Justin Torney, you have pleaded guilty to 7 charges. These can be summarised as follows. The principal charge is a breach of Rule 241. There are then 6 charges involving breaches of Rule 187(2). All charges effectively involve the one series of events.

The first and principal charge is that you forged the signature of Mr John Archibald on a notification of surrender of lease in relation to the surrender of that lease by Mr Archibald. This took place on approximately 8 February 2019.

The other 6 charges are based on false evidence in relation to this matter and particularly in relation to the signature purported to be that of Mr Archibald and the filling out the form. These false statements occurred between 15 and 19 February 2019.

Mr Ian Kitchin, who is your employer, made submissions on your behalf and set out the history of events. Essentially, we accept it.

This is a very unusual case. Mr Archibald is in fact your grandfather. He is 93 years of age and resides in Mildura. We accept that he could be described as being at times unpredictable and irrational. You are employed by Mr Kitchin as his farm manager on a property a long way from Mildura. The farm is devoted solely to the breeding, training, sales and to a lesser extent, the racing of standard breeds. Your grandfather would visit you a couple of times a year. To summarise things further, on one visit he said that he wanted to lease a horse, “Macray Macchiato”, which was on the farm and was one of no great ability. The horse was to be leased to him, transported to Mildura, and trained there. This occurred.

We accept that, after some months, Mr Archibald had a falling out with the first trainer. The horse was transferred to another trainer. There was another falling out. The horse never actually raced. After an unsatisfactory trial the second trainer said that the horse was no good. We accept that the horse ultimately was sent back to you.

Your understanding, and indeed that of Mr Kitchin, was that the horse was to be returned and the lease terminated.

It is then that the offences occurred. You forged your grandfather’s signature on the surrender of lease and persisted with a false story to the Stewards. Ultimately you admitted that you had signed the document, but said that you had Mr Archibald’s permission. That was false.

As stated, you have now pleaded guilty to all charges. That is certainly to your credit. Your background is that you have been involved in harness racing as a trainer and driver for 30 years. You have an excellent record. The vast bulk of any prior offences are what could be called traffic offences and are for comparatively minor offences.

Harness racing has been, and continues to be, at the centre of your life and, as stated, any infringements have been minor. We accept your explanation. Another matter of considerable significance is that a valid notice of surrender of the lease has since in fact been lodged. Further, the falling out with your grandfather has persisted, so that there has been disruption with your family life and structure.

Matters of specific, and particularly, general deterrence must be born in mind. We appreciate the unusual circumstances of this case, but the false signing of important documents is a practice that must be discouraged, to put it mildly. The Stewards acted properly and promptly in the present case and were fully entitled to do so. In different circumstances, this would be a very serious offence warranting a period of disqualification. In the circumstances of this most unusual case, we are of the view that there should not be any disqualification carrying with it, as it would, the complete disruption to your livelihood. We repeat that offences of this nature viewed as a whole are serious, but the unique circumstances of this case have led us to the conclusion that a monetary penalty is appropriate.

On charge 1 – the breach of Rule 241 – you are fined the sum of $4,000.

On charges 2 to 7 – the breaches of Rule 187(2) – you are fined the sum of $500 for each charge, a total of $3,000, but $2,000 of that is suspended for a period of 12 months.

The bottom line is that a penalty of $5,000 is now payable.

Mark Howard  
Registrar, Victorian Racing Tribunal