29 August 2022

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**KYAL COSTELLO**

**Date of hearing:** 18 August 2022

**Panel:** Judge John Bowman (Chairperson) and Ms Heidi Keighran.

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

Mr Kyal Costello represented himself.

**Charges:**  Australian Harness Racing Rule (“AHRR”) 173(1) states:

(1) A driver shall not bet in a race in which the driver participates.

 AHRR 238 states:

 A person shall not fail to comply with any order, direction or requirement of the Controlling Body or the Stewards relating to harness racing or to the harness racing industry.

**Particulars of charges:** **Charge 1: AHRR 173(1)**

1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
2. On 27 August 2020, you placed a multi bet on your Ladbrokes account, in which a leg of your multi bet was for “Rock The Nation” to win Race 4 at the Tabcorp Park Melton harness racing meeting on 28 August 2020.
3. As the driver of Rock The Nation in Race 4 at the Tabcorp Park Melton harness racing meeting on 28 August 2020, you did bet in a race in which you participated.

**Charge 2: AHRR 173(1)**

1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
2. On 3 September 2020, you placed a multi bet on your Ladbrokes account, in which the legs of your multi bet included:
3. “Jade Nien” to win Race 1 at the Cranbourne harness racing meeting on 3 September 2020; and
4. “Diamond Party” to win Race 7 at the Cranbourne harness racing meeting on 3 September 2020.
5. As the driver of “Whose Me Mum” in Race 1 and “Rocks Roy” in Race 7 at the Cranbourne harness racing meeting on 3 September 2020, you did bet in races in which you participated.

**Charge 3: AHRR 173(1)**

1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
2. On 4 September 2020, you placed a boxed trifecta bet on your Ladbrokes account in respect of Race 2 at the Tabcorp Park Melton harness racing meeting on the same date, in which you selected “River Patrol NZ”, “Extortion” and “Charisma King” to finish first, second and third in any order.
3. As the driver of Charisma King in Race 2 at the Tabcorp Park Melton harness racing meeting on 4 September 2020, you did bet in a race in which you participated.

**Charge 4: AHRR 173(1)**

1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
2. On 10 September 2020, you placed a multi bet on your Ladbrokes account, in which the legs of your multi bet included:
3. “Radical Major” to win Race 4 at the Tabcorp Park Melton harness racing meeting on 11 September 2020; and
4. “Scruffy Doolan” to win Race 5 at the Tabcorp Park Melton harness racing meeting on 11 September 2020.
5. As the driver of Radical Major in Race 4 and Scruffy Doolan in Race 5 at the Tabcorp Park Melton harness racing meeting on 11 September 2020, you did bet in races in which you participated.

**Charge 5: AHRR 173(1)**

1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
2. On 10 September 2020, you placed a multi bet on your Ladbrokes account, in which the legs of your multi bet included:
3. “Rock The Nation” to win Race 3 at the Tabcorp Park Melton harness racing meeting on 11 September 2020; and
4. “Radical Major” to win Race 4 at the Tabcorp Park Melton harness racing meeting on 11 September 2020; and
5. “Arggghhh” to win Race 6 at the Tabcorp Park Melton harness racing meeting on 11 September 2020.
6. As the driver of Rock The Nation in Race 3, Radical Major in Race 4 and “Bullys Delight” in Race 6 at the Tabcorp Park Melton harness racing meeting on 11 September 2020, you did bet in races in which you participated.

**Charge 6: AHRR 173(1)**

1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
2. On 14 September 2020, you placed a “Pick Your Own Odds” bet on your Ladbrokes account on “Letherhairdown” in Race 5 at the Cranbourne harness racing meeting on the same date.
3. As the driver of “Redand Blu Fella” in Race 5 at the Cranbourne harness racing meeting on 14 September 2020, you did bet in a race in which you participated.

**Charge 7: AHRR 173(1)**

1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
2. On 17 September 2020, you placed a multi bet on your Ladbrokes account, in which the legs of your multi bet included:
3. “Captain Bellasario” to win Race 2 at the Tabcorp Park Melton harness racing meeting on 18 September 2020; and
4. “Radical Major” to place in Race 3 at the Tabcorp Park Melton harness racing meeting on 18 September 2020; and
5. “Stunning Jasper” to place in Race 4 at the Tabcorp Park Melton harness racing meeting on 18 September 2020; and
6. “Zoliver” to win Race 5 at Tabcorp Park Melton harness racing meeting on 18 September 2020.
7. As the driver of Captain Bellasario in Race 2, Radical Major in Race 3 and Stunning Jasper in Race 4 and “Apollo Rock” in Race 5 at the Tabcorp Park Melton harness racing meeting on 18 September 2020, you did bet in races in which you participated.

**Charge 8: AHRR 173(1)**

1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
2. On 18 September 2020, you placed a “Pick Your Own Odds” bet on your Ladbrokes account on “Zoliver” in Race 5 at the Tabcorp Park Melton harness racing meeting on the same date.
3. As the driver of “Apollo Rock” in Race 5 at the Tabcorp Park Melton harness racing meeting on 18 September 2020, you did bet in a race in which you participated.

**Charge 9: AHRR 173(1)**

1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
2. On 18 September 2020, you placed a Same Race Multi bet on your Ladbrokes account in respect of Race 5 at the Tabcorp Park Melton harness racing meeting on the same date, in which the legs of the Same Race Multi bet were:
3. “Zoliver” to win; and
4. “Apollo Rock” to finish Top 3.
5. As the driver of Apollo Rock in Race 5 at the Tabcorp Park Melton harness racing meeting on 18 September 2020, you did bet in a race in which you participated.

**Charge 10: AHRR 173(1)**

1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
2. On 29 October 2020, you placed a bet on your Ladbrokes account for “Robert Crocka” to win Race 6 at the Mildura harness racing meeting on the same date.
3. As the driver of “Loyola Rocknrolla” in Race 6 at the Mildura harness racing meeting on 29 October 2020, you did bet in a race in which you participated.

**Charge 11: AHRR 173(1)**

1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
2. On 29 October 2020, you placed a “Pick Your Own Odds” bet on your Ladbrokes account on “Wilshire Boulevard” in Race 8 at the Mildura harness racing meeting on the same date.
3. As the driver of “Wilshire Boulevard” in Race 8 at the Mildura harness racing meeting on 29 October 2020, you did bet in a race in which you participated.

**Charge 12: AHRR 173(1)**

1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
2. On 5 November 2020, you placed a multi bet on your Ladbrokes account, in which a leg of your multi bet was for “Ragnarr” to place in Race 8 at the Yarra Valley harness racing meeting on the same date.
3. As the driver of “All Major” in Race 8 at the Yarra Valley harness racing meeting on 5 November 2020, you did bet in a race in which you participated.

**Charge 13: AHRR 173(1)**

* + - 1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
			2. On 5 November 2020, you placed a multi bet on your Ladbrokes account, in which a leg of your multi bet was for “All Major” to place in Race 8 at the Yarra Valley harness racing meeting on the same date.
			3. As the driver of All Major in Race 8 at the Yarra Valley harness racing meeting on 5 November 2020, you did bet in a race in which you participated.

**Charge 14: AHRR 173(1)**

* + - 1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
			2. On 13 November 2020, you placed a bet on your Ladbrokes account for “Boss Major” to win Race 7 at the Mildura harness racing meeting on the same date.
			3. As the driver of Boss Major in Race 7 at the Mildura harness racing meeting on 13 November 2020, you did bet in a race in which you participated.

**Charge 15: AHRR 173(1)**

* + - 1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
			2. On 13 November 2020, you placed a “Pick Your Own Odds” bet on your Ladbrokes account on “Mista Pumblechook” in Race 10 at the Mildura harness racing meeting on the same date.

* + - 1. As the driver of “Hilldale Sunrise” in Race 10 at the Mildura harness racing meeting on 13 November 2020, you did bet in a race in which you participated.

**Charge 16: AHRR 173(1)**

* + - 1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
			2. On 19 November 2020, you placed a “Pick Your Own Odds” bet on your Ladbrokes account on “Goodtime Grace” in Race 5 at the Mildura harness racing meeting on the same date.
			3. As the driver of “Boss Major” in Race 5 at the Mildura harness racing meeting on 19 November 2020, you did bet in a race in which you participated.

**Charge 17: AHRR 173(1)**

* + - 1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
			2. On 19 November 2020, you placed a “Pick Your Own Odds” bet on your Ladbrokes account on “Wilshire Boulevard” in Race 6 at the Mildura harness racing meeting on the same date.
			3. As the driver of Wilshire Boulevard in Race 6 at the Mildura harness racing meeting on 19 November 2020, you did bet in a race in which you participated.

**Charge 18: AHRR 173(1)**

* + - 1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
			2. On 26 November 2020, you placed a multi bet on your Ladbrokes account, in which the legs of your multi bet included:
1. “Pray Tell” to win Race 1 at the Mildura harness racing meeting on 26 November 2020; and
2. “Headmaster” to place in Race 2 at the Mildura harness racing meeting on 26 November 2020; and
3. “Have A Crack” to place in Race 3 at the Mildura harness racing meeting on 26 November 2020; and
4. “Boss Major” to place in Race 5 at the Mildura harness racing meeting on 26 November 2020; and
5. “Our Grand Torino” to win Race 10 at the Mildura harness racing meeting on 26 November 2020.
	* + 1. As the driver of Pray Tell in Race 1, Headmaster in Race 2, Have A Crack in Race 3, Boss Major in Race 5 and Our Grand Torino in Race 10 at the Mildura harness racing meeting on 26 November 2020, you did bet in a race in which you participated.

**Charge 19: AHRR 173(1)**

1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
2. On 26 November 2020, you placed a multi bet on your Ladbrokes account, in which the legs of your multi bet included:
3. “Pray Tell” to win Race 1 at the Mildura harness racing meeting on 26 November 2020; and
4. “Boss Major” to win Race 5 at the Mildura harness racing meeting on 26 November 2020; and
5. “Our Grand Torino” to win Race 10 at the Mildura harness racing meeting on 26 November 2020.
6. As the driver of Pray Tell in Race 1, Boss Major in Race 5 and Our Grand Torino in Race 10 at the Mildura harness racing meeting on 26 November 2020, you did bet in a race in which you participated.

**Charge 20: AHRR 173(1)**

1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
2. On 2 December 2020, you placed a Same Race Multi bet on your Ladbrokes account in respect Race 9 at the Mildura harness racing meeting on the same date, in which the legs of the Same Race Multi were:
3. “Tay Tay” to win; and
4. “Melody Beach” to finish Top 2; and
5. “Pennies Following” to finish Top 4.
6. As the driver of Pennies Following in Race 9 at the Mildura harness racing meeting on 2 December 2020, you did bet in a race in which you participated.

**Charge 21: AHRR 173(1)**

1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
2. On 2 December 2020, you placed a “Pick Your Own Odds” bet on your Ladbrokes account on “Murranji Moonlight” in Race 10 at the Mildura harness racing meeting on the same date.
3. As the driver of “Terra Rossa” in Race 10 at the Mildura harness racing meeting on 2 December 2020, you did bet in a race in which you participated.

**Charge 22: AHRR 173(1)**

1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
2. On 18 December 2020, you placed a “Pick Your Own Odds” bet on your Ladbrokes account on “The Defiant” in Race 9 at the Mildura harness racing meeting on the same date.
3. As the driver of The Defiant in Race 9 at the Mildura harness racing meeting on 18 December 2020, you did bet in a race in which you participated.

**Charge 23: AHRR 173(1)**

1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
2. On 18 December 2020, you placed a Same Race Multi bet on your Ladbrokes account in respect of Race 9 at the Mildura harness racing meeting on the same date, in which the legs of the Same Race Multi were:
3. “The Defiant” to win; and
4. “Elect To Rock” to finish Top 2; and
5. “Elegant Jewel” to finish Top 3.
6. As the driver of The Defiant in Race 9 at the Mildura harness racing meeting on 18 December 2020, you did bet in a race in which you participated.

**Charge 24: AHRR 173(1)**

1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
2. On 28 December 2020, you placed a multi bet on your Ladbrokes account, in which the legs of your multi bet included:
3. “Dragontown” to place in Race 8 at the Mildura harness racing meeting on 28 December 2020; and
4. “Caballo Diablo” to place in Race 11 at the Mildura harness racing meeting on 28 December 2020; and
5. “Terra Rossa” to place in Race 12 at the Mildura harness racing meeting on 28 December 2020.
6. As the driver of “Boss Major” in Race 8, “Our Grand Torino” in Race 11 and Terra Rossa in Race 12 at the Mildura harness racing meeting on 28 December 2020, you did bet in a race in which you participated.

**Charge 25: AHRR 238**

1. At all relevant times, you were a licensed driver with HRV, and a person bound by the Australian Harness Racing Rules.
2. As part of the 2019-2020 HRV licensing renewal process, you were required by the Controlling Body to declare betting accounts that you had within or outside of Victoria on the “HRV Betting Account Declaration” form.
3. In your signed HRV Betting Account Declaration form dated 30 August 2019, you failed to declare your Ladbrokes betting account, and by failing to do so, you failed to comply with a requirement of the Controlling Body relating to harness racing or to the harness racing industry.

**Pleas:** Guilty to all charges

**DECISION**

Mr Kyal Costello, you are pleading guilty to 25 offences. 24 of these relate to breaches of Australian Harness Racing Rule (“AHRR”) 173(1) – betting on a race in which you were participating. The remaining charge is pursuant to AHRR 238 – failing to disclose the existence of a betting account.

The 24 breaches of AHRR 173(1) occurred over a relatively short period from 27 August 2020 to 28 December 2020. Of these 24 offences, 15 involved you betting on a horse or horses other than the horse you were driving. The remaining nine did not involve horses other than your drive. Many of the bets were multiples. All were with Ladbrokes, an account which you did not declare to Harness Racing Victoria (“HRV”).

The bets ranged in size up to one losing bet, a multiple, for $1,000 on 5 November 2020. However, from 13 November 2020, the size of your bets dropped noticeably, with the largest bet being one of $50. The last relevant bet, being on 28 December 2020, was for $10.

You have emphasised that your betting in no way influenced your driving. That, of course, is significant, but does not alter the impression given to the public by reason of a driver having bets, some of them substantial, in a race on a horse other than that which he is driving. Betting on a horse which a person is driving is an offence, but the gravity of the offence goes to a much higher level when there are bets on other horses in the same race. The whole integrity of the sport is damaged.

We turn now to your circumstances. You are 21 years of age. You completed year 10 at school. Your father had a couple of horses, and you obtained a stablehand’s licence in 2015. You obtained Grade C and B drivers licences before becoming a Grade A licensed driver in 2020. Thus, these offences occurred during your first year of being a licensed Grade A driver and when you were approximately 19 years of age.

You have had more than your fair share of problems. Your parents separated and you now reside with your mother. You commenced betting at what you described as an extremely dark point in your life, with there being the family separation and financial hardship. You felt under pressure financially and in relation to your driving. Your father had turned to alcohol abuse, and you felt an obligation to protect your younger brother. The situation was complicated by the fact that your father was also your employer, he owning a construction firm. You were apprenticed to him but completed only three years of a four year apprenticeship. You left that employment.

The arrival of covid and the alterations and restrictions in harness racing further impacted on you and your ability to earn an income. You were in debt. You turned to gambling, to which you became addicted.

In June 2021, you were involved in a motor vehicle accident in which a death occurred. You have been charged with dangerous driving causing death. You are contesting this charge, but clearly the possibility of a lengthy prison sentence is hanging over you. A preliminary hearing is imminent. You have already outlaid a substantial amount in legal fees.

On a more positive note, you are working as a landscape gardener. You have, in essence, gone into partnership with a friend and you are drawing a wage of $850 a week, which leaves you well and truly in debt. Whilst you are still a licensed driver, you have virtually ceased this activity, having had only two drives for this calendar year and none in the last six months. Your attempt to establish the landscape gardening business occupies a lot of your time, but you still have one contact with harness racing.

That contact is as follows. Mr Gary and Mrs Debbie Quinlan operate a training establishment at Drouin. You work on a volunteer basis for them two days a week. You do some work/driving at their property. The Quinlans, and the voluntary work that you do for them, greatly assist your mental health. You love horses and clearly find your work with them to be very therapeutic. The Quinlans are people you have turned to over the years and you are continuing to do this, even though it costs you a considerable amount in petrol to do so.

As you have said, horses take your worries away, although, going to the Quinlans costs you money in petrol. The Quinlans have been very good to you over the years. We accept that being able to work with their horses has been extremely beneficial for you and you make time to do it, even after doing your landscaping work.

We would also add that you have expressed great remorse in relation to your burst of betting activity. It is a habit that continues to tempt you at times, but you are struggling to defeat it.

In relation to the betting offences, we accept your statement that, at no time, did you attempt to give a horse other than the one that you were driving a better chance.

This is a very unusual case. The offences, particularly involving other horses in the same race, are very serious. A penalty of disqualification would often be appropriate.

In the unusual, if not, almost unique circumstances of your case, we consider that suspension, rather than disqualification, is appropriate. We are of the view that the work that you do for the Quinlans could well be described as therapeutic in nature, as mentioned above, and that your continuing to be able to associate with them and their horses is very important for your mental health and your well being generally. However, a lengthy period of suspension is warranted. The impression created by drivers betting in races in which they are driving, and particularly on other horses, is one which has the potential to be extremely damaging to harness racing and its image. It is only because of the circumstances in your particular case and involving the Quinlans and your mental health and well being, that the penalty we impose is one of suspension, rather than disqualification.

We would add that we have also taken into account your early plea of guilty and the remorse which you have obviously shown. We also emphasise that we take into account your youthful age and the complete absence of any relevant prior offence.

The penalty of suspension which we impose is one of 24 months. This is imposed on Charge 2 and the same penalty is imposed on Charges 3, 5, 6, 7, 8, 9, 10, 12, 15, 16, 20, 21, 23 and 24, but they are to be concurrent with Charge 2.

On the remaining betting charges, being charges involving horses in which you were driving – the penalty for each of Charges 1, 4, 11, 13, 14, 17, 18, 19 and 22 is a suspension of six months, to be concurrent with the penalties set out in the preceding paragraph.

In relation to Charge 25, the Stewards suggested a penalty of a $500 fine. We appreciate your financial plight, but that seems to us to be a reasonable penalty and it is imposed.

In this complicated matter, we would hear the parties as to anything that may need to be added or anything that has been overlooked or that requires clarification. The bottom line is a total penalty of a 24 month suspension, to commence immediately, and a $500 fine.

Liberty to apply.

Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal