11 December 2020

**DECISION**

**RACING VICTORIA**

**and**

**LESTER O’GRADY**

**Date of hearing:** 17 November 2020

**Panel:** Judge John Bowman (Chairperson) and Dr Andrew Gould.

**Appearances:** Mr Daniel Bolkunowicz appeared on behalf of the Stewards.

 Mr Lester O’Grady represented himself.

**Charge:** Australian Rule of Racing (“AR”) 231(1)(b)(iv) states a person must not, if the person is in charge of a horse, fail at any time to provide proper and sufficient nutrition for the horse.

AR 231(1)(b)(iii) states a person must not, if the person is in charge of a horse, fail at any time to provide veterinary treatment to a horse where such treatment is necessary for the horse.

**Particulars of charge: Charge 1**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 23 February 2019, the horse Catalan Miss was examined by a Racing Victoria Veterinarian and was found to be a body score of 1 out of 5.
3. Up to and including 23 February 2019, you were the person in charge of Catalan Miss and had responsibility for its care.
4. Catalan Miss’ body condition score on 23 February 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

**Charge 2 (Alternative to Charge 1)**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 23 February 2019, the horse Catalan Miss was examined by a Racing Victoria Veterinarian and was found to be a body score of 1 out of 5.
3. Up to and including the 23 February 2019, you were the person in charge of Catalan Miss and had responsibility for its care.
4. Catalan Miss’ body score on 23 February 2019 resulted from your failure to seek veterinary treatment for Catalan Miss which was necessary to address the reason(s) for Catalan Miss’ poor body condition, in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

**Charge 3**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 23 February 2019 the horse Diamond Tathagata was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including 23 February 2019, you were the person in charge of Diamond Tathagata and had responsibility for its care.
4. Diamond Tathagata’s body condition score on 23 February 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

**Charge 4 (Alternative to Charge 3)**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 23 February 2019, the horse Diamond Tathagata was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including 23 February 2019, you were the person in charge of Diamond Tathagata and had responsibility for its care.
4. Diamond Tathagata’s body score on the 23 February 2019 resulted from your failure to seek veterinary treatment for Diamond Tathagata which was necessary to address the reason(s) for Diamond Tathagata’s poor body condition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

**Charge 5**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 23 February 2019, the horse Secord was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including 23 February 2019, you were the person in charge of Secord and had responsibility for its care.
4. Secord’s body condition score on the 23 February 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

**Charge 6 (Alternative to Charge 5)**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 23 February 2019, the horse Secord was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including the 23 February 2019, you were the person in charge of Secord and had responsibility for its care.
4. Secord’s body score on 23 February 2019 resulted from your failure to seek veterinary treatment for Secord, which was necessary to address the reason(s) for Secord’s poor body condition, in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

**Charge 7**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 18 March 2019, the horse Alphabetic was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including 18 March 2019, you were the person in charge of Alphabetic and had responsibility for its care.
4. Alphabetic’s body condition score on the 18 March 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

**Charge 8 (Alternative to Charge 7)**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 18 March 2019, the horse Alphabetic was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including the 18 March 2019, you were the person in charge of Alphabetic and had responsibility for its care.
4. Alphabetic’s body score on 18 March 2019 resulted from your failure to seek veterinary treatment for Alphabetic which was necessary to address the reason(s) for Alphabetic’s poor body condition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

**Charge 9**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 18 March 2019, the horse Divine Destiny was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including 18 March 2019, you were the person in charge of Divine Destiny and had responsibility for its care.
4. Divine Destiny’s body condition score on 18 March 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

**Charge 10 (Alternative to Charge 9)**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 18 March 2019, the horse Divine Destiny was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including 18 March 2019, you were the person in charge of Divine Destiny and had responsibility for its care.
4. Divine Destiny’s body score on 18 March 2019 resulted from your failure to seek veterinary treatment for Divine Destiny, which was necessary to address the reason(s) for Divine Destiny’s poor body condition, in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

**Charge 11**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 18 March 2019, the horse Laker’s Lass was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including 18 March 2019, you were the person in charge of Laker’s Lass and had responsibility for its care.
4. Laker’s Lass body condition score on 18 March 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

**Charge 12 (Alternative to Charge 11)**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 18 March 2019, the horse Laker’s Lass was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including 18 March 2019, you were the person in charge of Laker’s Lass and had responsibility for its care.
4. Laker’s Lass body score on 18 March 2019 resulted from your failure to seek veterinary treatment for Laker’s Lass, which was necessary to address the reason(s) for Laker’s Lass poor body condition, in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

**Charge 13**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 18 March 2019, the horse Leoncita was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including 18 March 2019, you were the person in charge of Leoncita and had responsibility for its care.
4. Leoncita’s body condition score on 18 March 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

**Charge 14 (Alternative to Charge 13)**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 18 March 2019, the horse Leoncita was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including 18 March 2019, you were the person in charge of Leoncita and had responsibility for its care.
4. Leoncita’s body score on 18 March 2019 resulted from your failure to seek veterinary treatment for Leoncita, which was necessary to address the reason(s) for Leoncita’s poor body condition, in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

**Charge 15**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 18 March 2019, the horse Matrimony was examined by a Racing Victoria Veterinarian and was found to be a body score of 1 out of 5.
3. Up to and including 18 March 2019, you were the person in charge of Matrimony and had responsibility for its care.
4. Matrimony’s body condition score on 18 March 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

**Charge 16 (Alternative to Charge 15)**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 18 March 2019, the horse Matrimony was examined by a Racing Victoria Veterinarian and was found to be a body score of 1 out of 5.
3. Up to and including the 18 March 2019, you were the person in charge of Matrimony and had responsibility for its care.
4. Matrimony’s body score on the 18 March 2019 resulted from your failure to seek veterinary treatment for Matrimony which was necessary to address the reason(s) for Matrimony’s poor body condition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

**Charge 17**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 18 March 2019, the horse Mega Mall was examined by a Racing Victoria Veterinarian and was found to be a body score of 1 out of 5.
3. Up to and including 18 March 2019, you were the person in charge of Mega Mall and had responsibility for its care.
4. Mega Mall’s body condition score on 18 March 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

**Charge 18 (Alternative to Charge 17)**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 18 March 2019, the horse Mega Mall was examined by a Racing Victoria Veterinarian and was found to be a body score of 1 out of 5.
3. Up to and including 18 March 2019, you were the person in charge of Mega Mall and had responsibility for its care.
4. Mega Mall’s body score on 18 March 2019 resulted from your failure to seek veterinary treatment for Mega Mall which was necessary to address the reason(s) for Mega Mall’s poor body condition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

**Charge 19**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 18 March 2019, the horse Shakuhachi was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including the 18 March 2019, you were the person in charge of Shakuhachi and had responsibility for its care.
4. Shakuhachi’s body condition score on 18 March 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

**Charge 20 (Alternative to Charge 19)**

1. You are, and were at all relevant times, an owner registered with Racing Victoria and resident in the State of Victoria.
2. On 18 March 2019, the horse Shakuhachi was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.
3. Up to and including 18 March 2019, you were the person in charge of Shakuhachi and had responsibility for its care.
4. Shakuhachi’s body score on 18 March 2019 resulted from your failure to seek veterinary treatment for Shakuhachi which was necessary to address the reason(s) for Shakuhachi’s poor body condition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

**Plea:** Not Guilty

**DECISION**

Mr Lester O’Grady, you have been charged with 10 breaches of Australian Rule of Racing (“AR”) 231(1)(b)(iv), and, in the alternative, 10 breaches of AR 231(1)(b)(iii). You are pleading “Not Guilty” to all charges. In summary form, AR 231(1)(b)(iv) concerns the failure to provide proper and sufficient nutrition for a horse. AR 231(1)(b)(iii) concerns the failure to provide veterinary treatment when such treatment is necessary. If the charges pursuant to the lack of nutrition are proved to our comfortable satisfaction, the charges concerning the failure to provide veterinary treatment fall away and are not pursued by the Stewards.

We shall deal firstly with AR 231(1)(b)(iv) – the failure to provide proper and sufficient nutrition. The 10 charges concern 10 individual horses. We shall not list their names or deal with them separately. All were on, or had been on, an agistment property which you operated. Stewards, Mr Peter Ryan and Ms Samantha Davison, visited the property you occupied on 18 March 2019. Veterinary surgeon, Dr Chris Heislers, accompanied them. Various horses were examined. Ten of them were found to have body scores of less than 2 out of 5. We might add that, although Dr Heislers on 18 March 2019 referred conversationally to horse, Diamond Tathagata, as having a bad score of 2 to 2 and a half, this was clearly an error. His detailed notes from his welfare assessment on 23 February 2019 clearly record its body score as being 1.5, consistent with photograph taken. Thus, we find that all 10 horses had scores of less than 2.

There is no real argument concerning the assessment of the horses and the photographs taken. There is also no argument but that this is a poor season for pasture and feed. Your defence is that you supplemented the feed of the horses with hay which you later discovered to contain moss and mould and that this caused their lack of condition. You say that when you remedied this situation, the condition of your horses improved. You have since moved to a different property. We note that you co-operated with Stewards and later inspections revealed the horses to be in good order.

We are comfortably satisfied that the charges have been made out. The only veterinary reports in evidence are those of Dr Heislers. Dr Heislers specifically stated that the hay was unlikely to have been a significant contributing factor to the weight loss. In his report of 11 April 2019, Dr Heilers noted that it was only recently prior to the visit and inspection of 18 March 2019 that you had commenced giving the ration of feeding concentration pallets with additional pollard to the horses, this being at a time of very poor seasonal pasture conditions.

We note the improvements that you made to the diet of the horses and their feeding. We note your cooperative attitude. However, the fact remains that these 10 horses were allowed to fall away in condition and that you failed to provide proper and sufficient nutrition for them. We repeat that we accept that you remedied the situation and apparently had commenced to take steps prior to the inspection of 18 March 2019.

The charges pursuant to AR 231(1)(b)(iv) have been proven to our comfortable satisfaction. The charges pursuant to AR 231(1)(b)(iii) thus drop away and we treat them as having been withdrawn. We shall hear the parties on penalty.

**PENALTY**

The issue of a realistic penalty in this particular case has the potential to be quite complex.

You are a registered owner, but have no other relevant registration. No relevant prior offence was alleged. Animal welfare is a most important issue and very much in the public eye. Everyone involved in the industry must be particularly aware of it. This case involved 10 horses.

We accept that you were in a situation where there were very poor pasture conditions. We also accept that you had taken steps to try and remedy the situation before the Stewards’ inspection of 18 March 2019. You cooperated fully with them. You have since moved properties and the Stewards are of the view that all horses on your new property are well looked after and in good condition. They have visited and satisfied themselves of this. There are approximately 20 horses, all thoroughbreds and all owned by your family. Some yearlings will be sold. You no longer take horses on agistment. Whilst your income is derived from activities to do with thoroughbreds, it is repeated that your only registration is that of an owner.

We are indebted to the Stewards for the very sensible and fair solution on penalty put forward by Mr. Bolkunowicz on their behalf and we adopt and apply it. It strikes a fair balance, whilst also emphasising the importance of animal welfare.

Your registration as an owner, being the only registration that you possess, is suspended for two years. To make it clear, that registration is in respect of the ownership of registered racehorses. Further, pursuant to section 50ZE(1)(b) of the *Racing Act 1958*, the Stewards may visit your property and inspect the horses on it at any time following the giving of reasonable notice. We repeat that you are suspended from being a registered owner of thoroughbred racehorses for two years from 17 November 2020.

Mark Howard
Registrar, Victorian Racing Tribunal