22 December 2021

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**MARK CALLICK**

**Date of hearing:** 15 November 2021

**Panel:** Judge John Bowman (Chairperson) and Judge Marilyn Harbison.

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

Mr Julian Dwyer represented Mr Mark Callick.

Mr Mark Callick attended the hearing.

**Charges:** Australian Harness Racing Rule (“AHRR”) 241 states:

A person shall not in connection with any part of the harness racing industry do anything which is fraudulent or corrupt.

 AHRR 240(c) states:

 A person shall not, whether alone or in an association with others, do, permit or suffer anything before, during or after a race which in the opinion of the Stewards or Controlling Body: (c) is improper.

AHRR 216 states:

A person, whether alone or in association with others, shall not fraudulently or improperly nominate or start a horse in a race.

AHRR 245 states:

A person shall not direct, persuade, encourage or assist anyone to breach these rules or otherwise engage in an improper practice.

AHRR 193(3) states:

A person shall not administer or allow or cause to be administered any medication to a horse on race day prior to such horse running in a race.

AHRR 190(1) states:

A horse shall be presented for a race free of prohibited substances.

AHRR 91(1)(a) states:

A person shall not carry on an activity regulated by licence -

(a) If that person is not the holder of a current licence.

**Particulars of charges: Charge 1: AHRR 241**

1. You were, at all relevant times, a person bound by the Australian Harness Racing Rules.
2. You were the owner or part owner of the following standardbred horses between the dates specified:

a. “Bo Carson”: 30 October 2020–5 March 2021;

b. “Impetuoso”: 30 October 2020 – 5 March 2021;

c. “Killer Dragon”: 30 October 2020 – 5 March 2021;

d. “Mighty Carson”: 4 November 2020 – 5 March 2021;

e. “Tale Of The Dragon”: 30 October 2020 – 5 March 2021.

(collectively, the Horses).

1. Between the dates identified in paragraph 2, you caused Laurie Callick to be the registered trainer of the Horses, despite you being primarily responsible for the training of the Horses in reality and practice.
2. Between 8 November 2020 and 24 February 2021, you caused the Horses to be nominated for, and start, in the following races with Laurie Callick listed as the registered trainer, despite knowing that you were primarily responsible for the training of the Horses in reality and practice:

a. Bo Carson: 13 November 2020; 19 November 2020; 2 December 2020; 9 December 2020; 18 December 2020; 28 December 2020; 12 January 2021; 26 January 2021; 2 February 2021; 16 February 2021.

b. Impetuoso: 2 December 2020; 28 December 2020; 5 January 2021; 26 January 2021; 2 February 2021; 16 February 2021; 24 February 2021.

c. Killer Dragon: 19 November 2020; 2 December 2020; 20 January 2021; 26 January 2021; 2 February2021; 16 February 2021.

d. Mighty Carson: 9 December 2020; 24 February 2021.

e. Tale Of The Dragon: 20 January 2021; 26 January 2021; 2 February 2021; 16 February 2021; 24 February 2021.

1. By you causing Laurie Callick to be listed as the registered trainer of the Horses between the dates identified in paragraph 2, and by causing the Horses to race on the dates identified in paragraph 4, when you were primarily responsible for the training of the Horses in reality and practice, you:

a. received a financial gain in the form of race prize money; and

b. caused or allowed Harness Racing Victoria and the betting public to be misled regarding the identity of the person primarily responsible for the training of the Horses

and, in doing so, you did engage in fraudulent or corrupt conduct

 **Charge 2: AHRR 240(c) (Alternative to Charge 1)**

1. You were, at all relevant times, a person bound by the Australian Harness Racing Rules.
2. You were the owner or part owner of the following standardbred horses between the dates specified:

a. “Bo Carson”: 30 October 2020 – 5 March 2021;

b. “Impetuoso”: 30 October 2020 – 5 March 2021;

c. “Killer Dragon”: 30 October 2020 – 5 March 2021;

d. “Mighty Carson”: 4 November 2020 – 5 March 2021;

e. “Tale Of The Dragon”: 30 October 2020 – 5 March 2021.

(collectively, the Horses).

1. Between the dates identified in paragraph 2, you caused Laurie Callick to be the registered trainer of the Horses, despite you being primarily responsible for the training of the Horses in reality and practice.
2. Between 8 November 2020 and 24 February 2021, you caused the Horses to be nominated for, and start, in the following races with Laurie Callick listed as the registered trainer, despite knowing that you were primarily responsible for the training of the Horses in reality and practice:

a. Bo Carson: 13 November 2020; 19 November 2020; 2 December 2020; 9 December 2020; 18 December 2020; 28 December 2020; 12 January 2021; 26 January 2021; 2 February 2021; 16 February 2021.

b. Impetuoso: 2 December 2020; 28 December 2020; 5 January 2021; 26 January 2021; 2 February 2021; 16 February 2021; 24 February 2021.

c. Killer Dragon: 19 November 2020; 2 December 2020; 20 January 2021; 26 January 2021; 2 February 2021; 16 February 2021.

d. Mighty Carson: 9 December 2020; 24 February 2021.

e. Tale Of The Dragon: 20 January 2021; 26 January 2021; 2 February 2021; 16 February 2021; 24 February 2021.

1. By you causing Laurie Callick to be listed as the registered trainer of the Horses between the dates identified in paragraph 2, and by causing the Horses to race on the dates identified in paragraph 4, when you were primarily responsible for the training of the Horses in reality and practice, you:

a. received a financial gain in the form of race prize money; and

b. caused or allowed Harness Racing Victoria and the betting public to be misled regarding the identity of the person primarily responsible for the training of the Horses

and, in doing so, you did engage in improper conduct before the races identified in paragraph 4.

**Charge 3: AHRR 216**

1. You were, at all relevant times, a person bound by the Australian Harness Racing Rules.
2. You were the owner or part owner of the following standardbred horses between the dates specified:

a. “Bo Carson”: 30 October 2020 – 5 March 2021;

b. “Impetuoso”: 30 October 2020 – 5 March 2021;

c. “Killer Dragon”: 30 October 2020 – 5 March 2021;

d. “Mighty Carson”: 4 November 2020 – 5 March 2021;

e. “Tale Of The Dragon”: 30 October 2020 – 5 March 2021.

(collectively, the Horses).

1. Between the dates identified in paragraph 2, you caused Laurie Callick to be the registered trainer of the Horses, despite you being primarily responsible for the training of the Horses in reality and practice.
2. Between 8 November 2020 and 24 February 2021, you caused the Horses to be nominated for, and start, in the following races with Laurie Callick listed as the registered trainer, despite knowing that you were primarily responsible for the training of the Horses in reality and practice:

a. Bo Carson: 13 November 2020; 19 November 2020; 2 December 2020; 9 December 2020; 18 December 2020; 28 December 2020; 12 January 2021; 26 January 2021; 2 February 2021; 16 February 2021.

b. Impetuoso: 2 December 2020; 28 December 2020; 5 January 2021; 26 January 2021; 2 February 2021; 16 February 2021; 24 February 2021.

c. Killer Dragon: 19 November 2020; 2 December 2020; 20 January 2021; 26 January 2021; 2 February 2021; 16 February 2021.

d. Mighty Carson: 9 December 2020; 24 February 2021.

e. Tale Of The Dragon: 20 January 2021; 26 January 2021; 2 February 2021; 16 February 2021; 24 February 2021.

1. By causing the Horses to be nominated for, and start, in the races identified in paragraph 4 with Laurie Callick listed as the registered trainer when you were primarily responsible for the training of the Horses in reality and practice, you fraudulently or improperly nominated and started the Horses in those races in association with Laurie Callick.

**Charge 4: AHRR 245**

1. You were, at all relevant times, a person bound by the Australian Harness Racing Rules.
2. You were the owner or part owner of the following standardbred horses between the dates specified:

a. “Bo Carson”: 30 October 2020 – 5 March 2021;

b. “Impetuoso”: 30 October 2020 – 5 March 2021;

c. “Killer Dragon”: 30 October 2020 – 5 March 2021;

d. “Mighty Carson”: 4 November 2020 – 5 March 2021;

e. “Tale Of The Dragon”: 30 October 2020 – 5 March 2021.

(collectively, the Horses).

1. You were aware, at all relevant times, that Laurie Callick was the registered trainer of the Horses.
2. Between the dates identified in paragraph 2, you undertook activities in relation to the Horses that required a trainer’s or stable hand licence despite not holding such licences and, in doing so, you assisted Laurie Callick to breach the Australian Harness Racing Rules.
3. Between on or about 22 February 2021 and 5 March 2021, you instructed Joshua Masierowski and Ruby Gleeson to undertake activities in relation to the Horses that requires a trainer’s or stable hand licence despite knowing they did not hold such licences and, in doing so, you directed and encouraged Joshua Masierowski and Ruby Gleeson to Breach the Australian Harness Racing Rules.

**Charge 5: AHRR 193(3)**

1. You were, at all relevant times, a person bound by the Australian Harness Racing Rules.
2. “Tale Of The Dragon” was nominated to compete in Race 2, “The Gateway Pace” at the Mildura harness racing meeting on 5 March 2021 (the Race).
3. On 5 March 2021, you administered a medication to Tale Of The Dragon on race day prior to that horse running in the Race.

**Charge 6: AHRR 193(3)**

1. You were, at all relevant times, a person bound by the Australian Harness Racing Rules.
2. “Impetuoso” was nominated to compete in Race 6, the “Gannon’s Harness Racing Colours Pace” at the Mildura harness racing meeting on 5 March 2021 (the Race).
3. On 5 March 2021, you administered a medication to Impetuoso on race day prior to that horse running in the Race.

 **Charge 7: AHRR 190(1)**

1. You were, at all relevant times, a person bound by the Australian Harness Racing Rules.
2. On 26 January 2021, you were left in charge of the horse “Bo Carson”, which you presented to race at the Mildura harness racing meeting in Race 1, “The Euston Club Pace”.
3. After this race, a urine sample was collected from Bo Carson with subsequent analysis of that sample revealing a cobalt concentration in excess of the allowable threshold.
4. As the person in charge of Bo Carson on 26 January 2021, you presented the horse to race at the Mildura harness racing meeting not free of cobalt, a prohibited substance when present at a concentration in excess of the allowable threshold.

**Charge 8: AHRR 91(1)**

1. You were, at all relevant times, bound by the Australian Harness Racing Rules.
2. At all relevant times, you did not hold a trainer’s licence or stablehand licence.
3. Between on or about 30 October 2020 and 5 March 2021, you were carrying on activities regulated by a trainer’s licence, namely, training horses.
4. Between on or about 30 October 2020 and 5 March 2021, you were carrying on activities regulated by a stablehand licence, namely, carrying out track work, assisting with the management, care and control of horses and assisting with the pre-race preparation of horses.

**Plea:** Guilty to Charges 1, 3, 4, 5, 6, 7 and 8

**DECISION**

Mr Mark Callick, you have been charged with a total of eight offences. One has dropped away. You have pleaded guilty to all remaining charges. Several of these are serious offences.

**Charge 1: AHRR 241**

The most serious is that which is the subject of Charge 1. It involves five breaches of Australian Harness Racing Rule (“AHRR”) 241. It relates to five horses which raced for a collective total of thirty times in late 2020 and early 2021. You caused them to be to be nominated and race in the name of your father, Mr Laurie Callick, as the registered trainer. At the time, your father was a registered trainer; he was aged 85 years; and, according to you, he is not in the best of mental health.

In the relevant period, at your father’s training establishment, there were 16 standardbred horses, eight of which were owned or part owned by you. Seven of those eight horses were trained and looked after by you, with some assistance from two other unlicensed people, Mr Joshua Masierowski and Ms Ruby Gleeson. Ownership of the other one had been transferred from your father into your name as owner, but continued to be trained by him. The other eight of the 16 were owned or part owned by your father. They were trained and looked after by him, with the assistance of another person.

As stated in the Particulars of Charge, you were effectively the trainer of the relevant horses. You received a financial gain in the form of race prizemoney. You allowed Harness Racing Victoria (“HRV”) and the betting public to be misled as to the person who was primarily responsible for the training of the horses in question.

**Charge 2: AHRR 240(c)**

This is an alternative to Charge 1 and, with your plea of guilty to Charge 1, Charge 2 drops away.

**Charge 3: AHRR 216**

This Charge involves a breach of AHRR 216. It involves the same five horses as those mentioned in Charge 1 and the same races. By your conduct, you fraudulently or improperly nominated the horses and raced them in the events in question.

**Charge 4: AHRR 245**

Charge 4 relates to your persuading, encouraging or assisting persons to breach the Rules or engage in an improper practice. You assisted your father to break the Rules. You also directed Mr Masierowski and Ms Gleeson to breach the Rules. These are offences against Rule 245.

**Charge 5: AHRR 193(3)**

This charge concerns a breach of AHRR 193(3). You administered to the horse “Tale Of The Dragon” medication on race day, when it was to run in Race 2 at Mildura on 5 March 2021. The horse is one of those involved in Charge 1, and accordingly there is some utility in dealing with this charge at the same time as that charge.

**Charge 6: AHRR 193(3)**

This is a similar charge to Charge 5, save that the horse involved was “Impetuoso” and it was to run in Race 6 at Mildura on the same occasion. It is also one of the horses referred to in Charge 1.

**Charge 7: AHRR 190(1)**

This involves a breach of AHRR 190(1). As the person in charge of “Bo Carson” (also one of the horses involved in Charge 1), you presented that horse to race at Mildura on 26 January 2021. It was not free of the prohibited substance, cobalt, at a concentration in excess of the allowable threshold. It is also convenient to deal with this charge at this time.

**Charge 8: AHRR 91(1)**

This concerns AHRR 91(1). Your involvement with the horses in question, and as referred to above, included activities that are regulated by licence and you were not the holder of a current licence.

**General Background and Charges 1,3,4 and 8**

As can be seen, the above are separate and distinct charges, but there is some overlapping and the potential for some allowance for the duplication of penalties. We bear that in mind.

Turning to your circumstances, we would mention the following. You are 60 years of age. As stated, at the time of these offences, your father was 85. Your mother died some three years ago.

The property at which the horses were stabled was your father’s establishment at Irymple, Victoria. When interviewed by Stewards at that property on 5 March 2021, you gave your occupation as a registered studmaster and said that you were currently applying for a stablehand’s licence. Your application was about to go before the Board, but you did not currently have such a licence. It is apparent that you have held a licence or licenses in the past. Impetuoso and Tale Of The Dragon, nominally trained by your father but in fact trained by you, were to race at Mildura that night.

The arrangement seems to have been quite clear. You trained the horses owned by you, but they raced in your father’s name as trainer. He, with the assistance of another person, trained his own horses. This was a flagrant, serious and repeated serious breach of AHRR 241.

We appreciate that you have had some mental health problems. We have read the report of 7 October 2021 from the Magnolia Clinic. According to that report, you have been seen there on four occasions. You have been diagnosed as suffering from depression and an adjustment disorder dating back to the death of your mother, but significantly aggravated by these events and charges. You are regretful in relation to what has occurred. The report also mentions that you are your father’s carer.

You have also had some 14 telephone consultations or conversations between 30 April and 30 August 2021 with an organisation called Benestar, which presumably also deals with mental health. The report from that organisation gives no more than a list of the consultations.

We take into account the submissions made on your behalf by your solicitor, Mr Julian Dwyer. Further, we also take into account your pleas of guilty to the charges.

We note that your record is not entirely free from blemishes. We leave to one side numerous “traffic” offences that took place when you were a licensed driver. However, we note that on 27 November 2013 you were fined $200 for performing stablehand’s duties when not so licensed. Perhaps of greater significance is that on 16 September 2012, you were disqualified for a period that is unclear and fined $1,000 for using a place as a stud farm when it was not so registered. These are old offences, but they mean that you cannot be treated as having a perfect record in relation to matters such as the present offences.

We turn now to the individual charges. Charge 1 is the most serious. Matters of both general and specific deterrence are relevant. You carried out the racing of these horses illegally trained by you on 30 occasions over three and a half months. This was no isolated or accidental occurrence. It was the repeated, organised breaching of an important Rule.

We are of the view that a substantial period of disqualification is warranted. You are disqualified for a period of two years. That disqualification will be backdated to commence on 5 March 2021.

Charge 3 also warrants a period of disqualification. It involves the nomination and racing of the relevant horses on the occasions referred to in Charge 1. Thus, there is a very considerable overlapping. You are disqualified for a period of 12 months, but that period of disqualification is entirely concurrent with the penalty imposed in relation to Charge 1.

Charge 4 relates to you assisting your father to break the Rules referred to in Charges 1 and 3 and directing Mr Masierowski and Ms Gleeson to do likewise. Again, there is some overlapping. A fine of $1,000 is imposed.

We shall deal with Charge 8 out of turn, because it also involves the same factual background as Charge 1 and your failure to be licensed. You are fined $1,000.

**Charges 5, 6 and 7**

Turning to Charge 5, this is of a distinct and different nature. It concerns the race day administration of medication. We agree with the penalty argued for by the Stewards. Offences of this nature have the potential to damage the image of harness racing and the concept of a level playing field. You are disqualified for a period of three months. Bearing in mind the quite different nature of this offence, the period of disqualification is to be served cumulatively upon Charge 1.

Charge 6 is similar to Charge 5, but involves a different horse at the same meeting. Again, disqualification for three months is ordered. This penalty is cumulative upon the penalties ordered for Charges 1 and 5.

Charge 7 deals with the presentation of a horse at a different meeting when that horse was not free of the prohibited substance, cobalt, above the threshold limit. The same observations as those made in relation to Charge 5 are again relevant. Disqualification for three months is again ordered and this penalty is cumulative upon the penalties ordered in relation to Charges 5 and 6.

We would repeat that, in relation to all penalties we have taken into account the pleas of guilty.

In summary, the end result is disqualification for a period of two years and nine months, such disqualification backdated to commence on 5 March 2021. In addition, you are fined a total of $2,000.

Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal