11 May 2021

**DECISION**

**RACING VICTORIA**

**and**

**MICHAEL CORNISH**

**and**

**DONNA GASKIN**

**Date of hearing:** 9 April 2021

**Panel:** Judge John Bowman (Chairperson) and Mr Robert Abrahams.

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

Mr Michael Cornish and Ms Donna Gaskin represented themselves.

**Charges and the particulars:** **Michael Cornish** CHARGE 1: AR 232(i)

AR 232 Failure to observe processes and directions of PRAs or Stewards A person must not:

(i) Give any evidence at an interview, investigation, inquiry, hearing and/or appeal which is false or misleading.

Particulars of charge:

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.

2. You hold a Training Partnership Licence with Donna Gaskin and your licenced premises is at 12 Shadoways Lane (Old Lady Augusta Rd), Echuca, Victoria.

3. You have been training horses from the above address during the COVID-19 pandemic.

4. On 26 August 2020, you were interviewed by Racing Victoria Stewards with respect to your living and travel arrangements, and compliance with the Racing Victoria COVID-19 protocols.

5. During the above interview you gave evidence:

(a) denying that Donna Gaskin had stayed at Popplewell Street, Moama, NSW during the COVID-19 pandemic; and/or

(b) denying that you had stayed overnight at Popplewell Street, Moama, NSW on Saturday 22 August 2020, during the COVID-19 pandemic.

6. Toward the end of the interview on 26 August 2020 and/or during an interview with the Stewards on 28 August 2020, you acknowledged that Donna Gaskin had stayed overnight at Popplewell Street Moama on more than one occasion during the COVID-19 pandemic, and that you both stayed overnight at Popplewell Street Moama on Saturday 22 August. Accordingly, the evidence you initially gave to the Stewards as noted in particular 5 was false and/or misleading and accordingly in breach of AR232(i).

CHARGE 2: AR 232(b)

AR 232 Failure to observe processes and directions of PRAs or Stewards A person must not:

(b) fail or refuse to comply with an order, direction or requirement of the Stewards or an official.

Particulars of charge:

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.

2. You hold a Training Partnership Licence with Donna Gaskin and your licenced premises is at 12 Shadoways Lane (Old Lady Augusta Rd), Echuca, Victoria.

3. Effective since Thursday 26 March 2020 Racing Victoria has published COVID-19 protocols specifying the requirements of industry participants travelling from interstate into Victoria (the Protocols), including:

(i) on 24 March 2020, an update on COVID-19 travel restrictions for Victorian Racing;

(ii) on 28 March 2020, Trainer and Associates COVID-19 FAQ (Question 19 – can I travel interstate);

(iii) on 1 April 2020, RV COVID-19 Protocols for Industry Participants and Service Providers (specifically page 5 – what do I do if I have travelled to and from interstate); and

(iv) on 1 April 2020, Information Sheet for Trainers.

4. In summary, the Protocols establish that from 26 March 2020, a licensed person who enters Victoria from interstate must not enter a licensed premises or racecourse/training centre in Victoria without having first self-isolated for 14 days.

5. Since 26 March 2020, you have travelled from New South Wales into Victoria on a number of occasions and entered licensed premises and/or racecourses and/or training facilities in Victoria without having first self-isolated for 14 days.

6. Your conduct as set out in particular 5 constituted a breach of the Protocols, and therefore a failure or refusal to comply with an order, direction or requirement of the Stewards or official, thereby being in breach of AR 232(b).

**Donna Gaskin** CHARGE 1: AR 232(i)

AR 232 Failure to observe processes and directions of PRAs or Stewards

A person must not:

(i) Give any evidence at an interview, investigation, inquiry, hearing and/or appeal which is false or misleading.

Particulars of charge:

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.

2. You hold a Training Partnership Licence with Michael Cornish and your licenced premises is at 12 Shadoways Lane (Old Lady Augusta Rd), Echuca, Victoria.

3. You have been training horses from the above address during the COVID-19 pandemic.

4. On 25 August 2020, you were interviewed by Racing Victoria Stewards with respect to your living and travel arrangements, and compliance with Racing Victoria COVID-19 protocols.

5. During the above interview, the Stewards questioned you whether you had crossed into NSW and/or stayed or visited Popplewell Street, Moama, NSW during the COVID-19 Pandemic; and your responses impliedly and/or expressly rejected that you had done so.

6. In an interview with the Stewards on 28 August 2020, you acknowledged that you had crossed into NSW and stayed overnight at Popplewell Street Moama on at least two occasions during the COVID-19 pandemic. Accordingly, the evidence you gave to the Stewards as noted in particular 5 was false and/or misleading and accordingly in breach of AR232(i).

CHARGE 2: AR 232(b)

AR 232 Failure to observe processes and directions of PRAs or Stewards A person must not:

(b) fail or refuse to comply with an order, direction or requirement of the Stewards or an official.

Particulars of charge:

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.

2. You hold a Training Partnership Licence with Michael Cornish and your licenced premises is at 12 Shadoways Lane (Old Lady Augusta Rd), Echuca, Victoria.

3. Effective since Thursday 26 March 2020 Racing Victoria has published COVID-19 protocols specifying the requirements of industry participants travelling from interstate into Victoria (Protocols), including:

(i) on 24 March 2020, an update on COVID-19 travel restrictions for Victorian Racing;

(ii) on 28 March 2020, Trainer and Associates COVID-19 FAQ, (Question 19 – can I travel interstate);

(iii) on 1 April 2020, RV COVID-19 Protocols for Industry Participants and Service Providers (specifically, page 5 – what do I do if I have travelled to and from interstate; and

(iv) on 1 April 2020, Information Sheet for Trainers.

4. In summary, the Protocols establish that from 26 March 2020, a licensed person who enters Victoria from interstate must not enter a licensed premises or racecourse/training centre in Victoria without having first self-isolated for 14 days.

5. Since 26 March 2020, you have travelled from New South Wales into Victoria on a number of occasions and entered licensed premises and/or racecourses and/or training facilities in Victoria without having first self-isolated for 14 days.

6. Your conduct as set out in particular 5 constituted a breach of the Protocols, and therefore a failure or refusal to comply with an order, direction or requirement of the Stewards or official, thereby being a breach of AR 232(b).

**Plea:** Guilty

**DECISION**

Mr Michael Cornish and Ms Donna Gaskin, you are a training partnership. You have each pleaded guilty to two charges. The circumstances alleged against you are much the same, although there is a slight difference in relation to charge 1. However, effectively the charges can be dealt with all together and the penalties for each of you will be identical.

The Rules that you are charged with breaching are AR 232(i) and AR 232(b). As stated, you both are pleading guilty to each and a very useful statement of agreed facts has been provided. The offences could be summarised as being the giving of false and misleading evidence and, secondly, the failure to comply with an order, direction or requirement of the Stewards.

The offences occurred against the backdrop of the COVID-19 epidemic. You live in Moama, in a rental property on the New South Wales side of the Murray River. Your horses are and were stabled adjacent to the Echuca racecourse, on the Victorian side. From 26 March 2020, relevant COVID-19 protocols introduced by Racing Victoria were operating. A licensed person entering Victoria from interstate could not enter licensed premises or racecourses in Victoria without having self-isolated for 14 days.

You admit that you breached that protocol and initially gave false information to the Stewards in relation to your movements. However, ultimately you both admitted that you had breached the protocol.

The background circumstances are that, as stated, you lived in rented premises in Moama. In August 2020, you were given very short notice and it was confirmed that you could not reside on the New South Wales side of the border and cross to the Victorian side to see and train the horses. You both had been making enquires in this regard. This situation came to a head on approximately 22 August 2020. You both stayed overnight in the rented property in Moama, before crossing to the border to Echuca. Subsequently, you moved out from Moama to Echuca, when you stayed with friends and could tend to your horses. However, you admit that you had breached the protocol, failed to comply with an order of the Stewards and that you both had initially given a false account of things to the Stewards, albeit not for a very long period. You also admit that you had failed to comply with the order that you had been given in relation to your movement. Subsequently, you were able to return to the situation of living in Moama and training in Echuca.

Your situation was complicated by the fact that you have two young children, aged 9 and 13, who have behavioural problems and have special educational needs. We can appreciate that the comparatively sudden requirement to vacate the family home caused great stress.

We agree with the Stewards that the whole affair must be viewed against the background of the enormous threat to health created by the COVID-19 virus and its frightening prevalence in August 2020. We also agree that the threat that could have been posed to the ongoing conduct of racing in Victoria at that time is an important factor. That racing could continue, with restrictions and modifications, and on an uninterrupted basis is a credit to all involved. Compliance with the protocols was and is very important.

You have both been involved in racing for decades and have no relevant prior convictions. Your partnership is owed a very substantial amount of money – in the hundreds of thousands – by way of outstanding training fees. You have very substantial expenses. There are some 21 horses in work. You have home rental and stable rent to pay, as well as a large feed bill. You have approximately 5 staff. You also have substantial personal expenses – rent, car, education expenses for the children and the like.

Weighing everything up, we have come to the following decision in relation to penalties.

In relation to the offence of giving false and misleading evidence – the first charge – we think that the penalty proposed by Mr Bolkunowicz on behalf of the Stewards in fair, reasonable and appropriate. You are each suspended for a period of six weeks, but that suspension is in turn suspended for two years. In other words, if either of you commit a similar offence – a breach of the same rule – in the next two years, the 6 week penalty will become operative. We are confident that you will not, but the penalty will become active if you should breach the Rule in that two year period.

The Stewards have suggested that, on charge 2 – the failure to comply with an order – you are each fine $1,500, a total of $3,000. Failing to comply with orders makes the already difficult job of the Stewards that much more difficult. The penalty suggested by them certainly could not be described as over the top. However, in all the circumstances of this case – including your pressing financial situation, your domestic situation and your guilty plea – we are of the view that a fine of $1,000 each is appropriate. Thus, there is a total fine of $2,000.

Mark Howard
Registrar, Victorian Racing Tribunal