RACING APPEALS TRIBUNAL NSW

TRIBUNAL: Mr D. B. Armati

Reserved Decision

12 JUNE 2019

Appeal by Racing NSW against Angelis Vasili on penalty

Appeal by Angelis Vasili against Racing NSW on breach of the rule

RULE ARR175(a)

Decision:

1. **In the appeal of Racing NSW v Vasili stood over for further orders.**
2. **In the appeal of Vasili v Racing NSW, appeal upheld.**
3. **Orders in respect of appeal deposit stood over.**

Background

1. Racing NSW appeals against the Appeal Panel decision of 2 March 2017 on the grounds that the penalty imposed on Angelis Vasili (for brevity named "Vasili" hereafter) for a breach of ARR 175(a) was inadequate.

2. The Appeal Panel imposed a monetary penalty of $10,000 in lieu of the decision of the Stewards to disqualify Vasili for 4 months.

3. Vasili sought to appeal against a finding of the breach of the rule.

4. The Appeal Panel decision was 2 March 2017, the Racing NSW appeal on penalty was 20 April 2017 and Vasili lodged an out of time to appeal application and a notice of appeal on 23 April 2017 and amended that later document on 8 May 2017.

5. On 21 July 2017 the Tribunal refused the Vasili out of time application and determined that it would proceed on the Racing NSW severity appeal only.

6. On 13 April 2018 Justice Garling in the Supreme Court of New South Wales in Vasili v Racing NSW [2018] NSWSC 451 remitted the cases of Racing NSW and Vasili to the Tribunal for determination. His Honour ordered as follows:

> "162. The first was that it misapprehended its jurisdiction, by holding that it only had jurisdiction to deal with the ground of appeal raised by Racing NSW going to the inadequacy of the penalty imposed. In fact, its jurisdiction was to hear and determine the whole of the proceedings which were before the panel, and which resulted in the decision of the panel against which the appeal had been brought."

7. On 13 May 2019 the Tribunal heard the appeal of Vasili against a breach of the rule. The issue of the appeal by Racing NSW against the inadequacy of the penalty was deferred pending the determination of whether Vasili had in fact breached the rule.

8. For completeness it is noted that licensed trainer Con Karakatsanis ("Karakatsanis") had been the subject of a joint hearing with Vasili before the Stewards and the Appeal Panel. In each case the breach of rules was found established and the Stewards had imposed a period of disqualification of four (4) months reduced by the Appeal Panel to a suspension of two (2) months. Karakatsanis did not appeal to the Tribunal.

The Charge

9. The charge against Vasili was in the following terms:

> "Registered owner Mr Angelis Vasili you are hereby charged with committing an improper practice under AR175(a).
>
> AR175 The principal authority (or the Stewards exercising power delegated to them) may penalise:
>
> (a) Any person who, in their opinion, has been guilty of any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing.
>
> The particulars of the charge being that you, Mr Angelis Vasili, committed an improper practice in connection with racing in that, during the period on or about 7July 2016 and 16 August 2016, you were in all the circumstances the trainer of the horses owned by you that are detailed below which were stabled at your property at 12 Munday Street, Warwick Farm, when you were not the holder of a current trainer licence and you improperly held licensed trainer Mr Con Karakatsanis out to be the trainer of those horses.
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> Details of horses: Never Been Another; Lord Marmaduke; Tears Of Gold; Once Were Warriors; 2yo filly Americain x Teralani"

The evidence

10. On this appeal the evidence has comprised the bundle of material from the Stewards hearing that was before the Appeal Panel, the transcript of the hearing before the Appeal Panel, the Appeal Panel decision of 2 March 2017, the statement

of Vasili of 17 February 2017, the statement of Karakatsanis of 15 February 2016 and the transcript of the hearing before the Supreme Court in the case of *Vasili v Racing NSW*.

The Ingredients of the Charge

11. The particulars of the charge raise a number of matters and are set out below.

12. It is an agreed fact that the relevant dates are those particularised as being 7 July 2016 and 16 August 2016. It is not in dispute that as particularised Vasili was the owner of the five named horses.

13. The Tribunal has not been asked to focus in any detail on the particular that "you were in all the circumstances the trainer of the horses".

14. It is an agreed fact that the words "when you were not the holder of a current trainer licence" are not in issue and are not read. That arises because the respondent does not contend it is improper to train without a licence.

15. That leaves for the determination in this hearing the key ingredient in the particulars of "improperly held licensed trainer Mr Con Karakatsanis out to be the trainer of those horses."

16. The respondent in its opening said that the ingredients of that improper holding out were as follows:

1. A holding out to Racing NSW through the filing of stable returns when Karakatsanis was not in fact the trainer.
2. A holding out to Warwick Farm by a holding out to the supervisor of trackwork at Warwick Farm that Karakatsanis was the trainer of the subject horses when in fact he was not the trainer.

Improper

17. Rule 175(a) requires, as one of its ingredients to be established, that the conduct engaged in was improper.

18. In numerous decisions in this and the other two codes the Tribunal has addressed the test of improper in respect of the rules of each of those codes on many occasions.

19. In the decision of *Watt* of 1 May 2015 on a question whether 175(a) had been breached the Tribunal, having analysed the relevant conduct there, said at page 17:

> "The Tribunal finds that the "improper" test here is to be assessed on an objective assessment of the evidence, considering the facts and circumstances of the conduct. It is a question of fact. Intent to act improperly does not have to be proved. The issue of whether it was improper is governed here by the proof of the particulars alleged and they have to be assessed."

20. The Tribunal's most recent determination on improper in the various codes was, allowing for the different words which might need consideration on an ejusdem generis basis, was in the matter of *Talbot and Sayer v Greyhound Racing NSW* 20 May 2019 when the Tribunal said:

> "53. In the thoroughbred racing code, in the decision of *Johnson* on 28 November 2012, the Tribunal assessed the meaning of improper. After an analysis of case law, it came to the conclusion as follows:
>
> > "It is an objective test to be considered in all the circumstances as a reasonable member of the community would regard the conduct. That reasonable person would have regard to the views of each of (name people) and have regard to the fact that it is conducted in a regulated integrity-based sport. That assessment would look to whether some or all of the conduct in all the circumstances could be objectively reasonably viewed …"

And then it went on to deal with a particular test there, here it would be objectively viewed as not meeting appropriate standards, and continued:

> "54. It is important to have a look at what was said in *O'Connell v Palmer* 53 FCR 429 a South Australian District Registry General Division Court of Appeal Decision, which was summarised in Johnson as follows:
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> > "The mental state of a person charged may, however, have an influence on the judgement which the Tribunal is to make as to whether acts done should be found to be acting in a manner unbecoming" – in that case – "a member of the Australian Federal Police. And that will be so, in the Tribunal's opinion, whether that judgement is formed by reference to what the Tribunal considers reasonable members of the community would regard as unbecoming conduct or by reference merely to its own opinion of what is unbecoming."

It then went on to deal with examples of for particular police officer, and continued:

> "55. Therefore, it is an objective test. But in assessing, as the reasonable person would, as to whether it is appropriate conduct, regard must be had not just to all of the circumstances but to some extent what motivated the particular person to engage in it. And that is not to turn an objective test into a subjective test but merely that one of the many ingredients to be considered in all the circumstances is, as expressed, what was the motivation for the conduct."

21. In this case, it is the submission of the respondent that the test of impropriety ofn the facts is that Vasili engaged in a deceitful practice by holding out someone as the trainer who was not. That is obviously a holding out of Karakatsanis. The holding out is to Racing NSW and the supervisor of trackwork at Warwick Farm. The holding out is in the context of the respondent's submission that Vasili engaged in dummy training.

<u>Arguments on the Tribunal's Powers and Functions</u>

22. Vasili argued that the respondent was limited on the particulars by submissions made to the Supreme Court in the Vasili case which was a judicial review matter. There it was said that the respondent only relied upon the holding out to Racing NSW and not to the track supervisor at Warwick Farm.

23. In addition, it was submitted that the holding out to the track supervisor at Warwick Farm was not an issue for the Appeal Panel.

24. Vasili argued that at no prior stage had the respondent put a state of mind of Vasili for consideration.

25. Therefore, there was a fairness submission because the respondent was now alleging things not dealt with before.

26. The Tribunal on this appeal agreed that Vasili must receive the benefit of procedural fairness. No adjournment of the proceedings was sought to obtain further evidence or to present further evidence and no other prejudice was identified which would cause the Tribunal to have precluded the respondent from advancing this further particular orally or for the proceedings to be adjourned.

27. The respondent was allowed to proceed on the two oral particulars.

28. In submissions Vasili raised an issue relating to a limit on the powers of the Tribunal.

29. That submission was based upon Section 17 of the Racing Appeals Tribunal Act 1983, which summarised and relevantly is in the following terms:

> "**17** (1) The Tribunal may do any of the following in respect of an appeal ...
>
> (a) dismiss the appeal,
>
> (b) confirm the decision appealed against or vary the decision by substituting any decision that could have been made by the Appeal Panel ...
>
> (c) refer any matter relating to the decision appealed against to the Appeal Panel ...

(d) make such other order in relation to the disposal of the appeal as the Tribunal thinks fit."

30. The submission, therefore, was that this Tribunal was being asked to substitute a decision which would be based on a different case of that which the Appeal Panel dealt with because the Appeal Panel was not asked to deal with the holding out to the track supervisor at Warwick Farm.

31. The submission continued that this was in the context of the particulars being limited to the respondent's case to a holding out to Racing NSW only and that there has been no particularisation of a state of mind.

32. The Tribunal finds the fact that this is a de novo hearing with additional evidence permissible provides the way in which Section 17 powers are to be considered.

33. The alleged breach has not changed. Indeed, the particularisation has been reduced. The written particularisation has not been amended or added to in any way. Facts that go to the particulars can be additional to those that were before the Appeal Panel and the Stewards and this is often the case and is entirely permissible.

34. Nothing new is charged, new facts have not been adduced unfairly, therefore, a suggestion of impropriety on a different basis to that which was considered by the Appeal Panel determination is not outside the scope of the Tribunal's powers.

35. The Appeal Panel decision can be varied if it could have been made by the Appeal Panel.

36. The Tribunal is not persuaded that a submission made to the Supreme Court on a judicial review as a particular limb of a case then being argued prevents a party

advancing an additional issue at a remitted hearing of issues at a de novo hearing with additional evidence allowed.

37. The meaning of improper itself can embrace deception, or calculation to deceive, or other conduct and those ingredients do not have to be pleaded in particulars.

38. In any event, this is not a court especially not a court conducting a criminal trial. The respondent in fact had Stewards, not lawyers and not Parliamentary Counsel etc, draft the particulars. The Tribunal has on many occasions been asked to read particulars in that light. As long as the particulars fairly cover the case being brought and are sufficiently clear, then they are not to be read down.

39. There is reinforcement of such an approach to particulars from decisions on interpretation of the Rules.

40. The remarks of Justice Haylen in the Racing Appeals Tribunal of NSW in the matter of *Moncrieff*, 6 December 2010, dealing with a prohibited substance in a greyhound are apt, at 21:

> "As observed earlier in this Decision, the Rules of Racing have been developed to meet particular circumstances that are intended to apply in a common sense way. That approach was articulated by Judge Goran when dealing with the Thoroughbred Racing Appeal of V. P. Sutherland. In the course of that case, his Honour had cause to make the following observation:
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> > "There appears to be a common belief among lawyers who come to argue their client's case before Racing Tribunals that they are in fact dealing with legislation which has been considered and drafted by some person of the status of a Parliamentary draughtsman with precision and particularity consistently with other areas of the law in mind. As a matter of common practice this is not true among domestic sporting rules.
> >
> > Racing rules have grown up on a consensual basis. They are amended to suit the exigencies that arise, particularly as persons participating in the sport adopt new and/or undesirable practices. Most amendments are made to remedy shortcomings in the rules, although bodies of rules are also set up to regulate new institutions

> in the sport and the like. If there has to be approval by a Minister of a Government Department, it is usually on the basis of the content of the rule, rather than its form."

41. Similar remarks were made by Justice Leeming in the Court of Appeal in *Day v Harness Racing NSW* [2014] NSW CA 423. At paragraphs 79 to 81 his Honour analysed Local Rules on the basis they were not drafted by Parliamentary Counsel nor scrutinised in a way such as a Bill that goes through Parliament might be and that they are not, therefore, carefully drafted unless keenly scrutinised in primary legislation. He quoted a number of cases to the effect that it is necessary to bear in mind the authorship of the rules to find their purposes and the readership to which they are addressed.

42. The adopting of those principles to something as important as the rules means when particulars are looked at a much more lenient test is required.

43. These quotes again provide a timely reminder that the Tribunal is a sporting body, not a criminal court, and a commensurate approach on appeals to procedures and practices means less formality, less is the detailed particularisation, less legality is required. So far as procedural fairness in practices and processes is applied, then a more informal approach to these matters is necessary.

44. Accordingly, in scrutinising these particulars which were, in all probability, drawn by Stewards less specificity is required.

Other Points in Issue

45. Vasili says it is necessary to prove that he engaged in a practice, not an action. Therefore, there is a need to prove repetition of conduct, not a mere action.

46. Vasili argues also that all ingredients in the particulars need to be proved. That, of course, excludes the words “when you were not the holder of a licence”. It is therefore submitted it is necessary to prove the case in respect of each of the five named horses.

47. Vasili also says it is necessary to prove that Vasili held out and not that he caused someone else to hold out or allowed someone else to hold out, but that it must be that he did the holding out.

48. These matters do not require more detailed analysis because the case for the respondent does not take issue with those submissions.

Introductory Facts

49. Vasili was cross-examined before the Tribunal and in addition to his various activities told to the Stewards and the Appeal Panel he gave evidence to the Tribunal that he has been associated with thoroughbred horses since his twenties, he now being aged in his sixties. He has been an owner of racehorses on and off. He was a licensed metropolitan trainer between 1997 and 2006, approximately. He has not been a commercial trainer as such but generally trained horses for friends or those in which he has an ownership. He had no recollection of being a licensed stablehand. He was an owner-trainer for some period from 2000 onwards and possibly from 2002 to 2007.

50. He agreed and it is established that he has the knowledge of and the competence to undertake training of thoroughbred horses.

51. On 15 June 2016 he made an application to Racing NSW to be licensed as a trainer. That was to be a trainer at Warwick Farm where he had stables. That application was refused in mid-August 2016.

52. At all relevant times Vasili owned or part-owned the five subject horses before 7 July 2016. His ownership is not in dispute and is proved, but this is not a critical ingredient.

53. Prior to the dates particularised he had some of the horses with trainers Vic Thompson and David Vandyke, and one of the horses with Michael Freedman.

54. Vasili's son knew Karakatsanis and recommended him as a trainer to Vasili should he require one.

55. The trainer Thompson, who had a number of the horses, had a heart attack. He was unable to continue to care for those horses that he had. Vasili expressed concerns for the welfare of the horses. At some stage all of the horses came back to him, legally, although they went straight from the other two trainers to Karakatsanis at times which do not need to be determined. Suffice it to say that each of the five horses were in Vasili's stables at all relevant times particularised.

56. At the time of Thompson's heart attack Vasili knew he needed a licence to train and the evidence before the Tribunal was that he would not train horses before he had his licence to train.

57. Vasili said he knew that you could not take a racehorse to a track without a licence.

58. Vasili's concern was for the welfare of his horses and the fact that they were in need of a short-term management and meant that he needed a fix so he spoke to Karakatsanis's then partner, Miss Casey Lock.

59. Miss Lock was the foreperson of Karakatsanis Racing stables. Her affidavit before the Stewards is in evidence.

60. To summarise it, she gave evidence that Vasili was a client of Karakatsanis Racing. Vasili had phoned her around 7 July 2016 to see if she would speak to Karakatsanis about taking on the five subject horses for training. The terms discussed in that conversation were that Karakatsanis would be responsible for training the horses, Vasili would pay for the horses' feed and for the extra staff to look after the horses and that Karakatsanis was to send out monthly bills at a cheaper rate than usual due to the fact that Vasili was paying for the staff and the feed. She considered this an ordinary business arrangement, that is, that Karakatsanis would train the horses and be paid. The only difference to the normal was the costs of the feed and the staff.

61. Critically, she said in that conversation no issue of dummy training for Vasili was raised. There was no end date to the arrangement although she had been told Vasili had made an application for a trainer's licence.

62. Subsequently, Miss Lock spoke with Karakatsanis and he agreed that he would go ahead with the arrangements on that basis. The boxes were set up and all five horses came into Karakatsanis's care over a period of about two weeks from 8 July.

63. Critically, she stated that Karakatsanis oversaw the horses working, supervised them using his walking machine and had primary responsibility for their training. She oversaw the running of the stables. She said that the horses were stabled at Vasili's property as Karakatsanis' stables were full. Those stables were only about 100 metres apart.

64. She summarised her evidence as saying that Karakatsanis Racing had been doing all the training for Vasili's five horses since they came into Karakatsanis's care.

65. The evidence establishes that Vasili and Karakatsanis later discussed the matters to which Miss Lock has made reference. There is no difference in the contractual arrangements of what is said to have taken place so far as Vasili and Karakatsanis were concerned to those which Miss Lock set out.

66. The evidence before the Stewards, the Appeal Panel and the Tribunal establishes the following functions for Karakatsanis:

He oversaw the working of the horses, and this is established by the evidence of Cassidy;

He did not watch the horses work, and this is established by Karakatsanis's own evidence;

He supervised the horses on the walking machine;

He visited them in Vasili's stables daily;

He occasionally rode some of the horses for trackwork;

On one occasion he instructed the stablehand Good on trackwork.

67. The evidence establishes that Vasili engaged in, and was allowed to engage in, the following conduct:

Employing the stablehand Good;

Retaining the freelance trackwork rider Cassidy;

Paying the wages of each of those two employees;

Giving those two employees instructions, especially in relation to the work regime of each of the two horses;

Texting on a daily basis instructions to them both as to what the horses were to do on the following day;

Intentionally keeping Karakatsanis out of that text loop because he knew of the personal problems Karakatsanis was having and the fact that he was very busy.

68. That establishes that Karakatsanis simply was not told of the work regime and had no direct input into the work that was to be carried out. That provides an explanation of Karakatsanis's almost total ignorance of what in fact was taking place in relation to work each day when he was questioned by the inspectors and at the Stewards inquiry.

69. Vasili was entirely responsible for the feeding regime of the horses because he had devised it. The food was in his stable and the feeding regime was set out on an A4 sheet of paper put up in Vasili's stables. He and Karakatsanis had discussed the feeding regime but Karakatsanis merely noted that Vasili was to do everything in respect of it.

70. Vasili arranged all veterinary care for the horses and, indeed, on occasions in the relevant period veterinary care was required. The vet used was that retained by Vasili. Karakatsanis only had passing knowledge of the veterinary care and needs.

71. No invoices for the training of the various horses were issued by Karakatsanis to Vasili until after the inspectors' questioning of Karakatsanis. There had been no written contract between Vasili and Karakatsanis. Immediately after the inspectors' investigation a formal contract in a usual form was adopted and invoices were issued. The evidence is that Vasili had constantly asked Karakatsanis to send him invoices, but Karakatsanis simply did not get around to it.

72. As set out, all of the horses were stabled in Vasili's stable because Karakatsanis's stables were full.

73. There is a need to examine what a trainer is required to do and, in fact, does to assess the respective roles of Vasili and Karakatsanis. This arises because Racing NSW's position is that the licensing regime for trainers is fundamental to the regulation of the industry.

74. The word "trained" is not defined in the old Australian Rule of Racing, AR1, which applied at the relevant time.

75. "Trainer" is simply defined to mean a person licensed to train horses.

76. The "Licence" definition takes these issues no further.

77. It is the case of the parties that there are no New South Wales case precedents determining what is the meaning of "training".

78. The Appeal Panel was taken to two Queensland decisions, which were not the subject of any detailed submission or consideration before this Tribunal. They were referred to in written submissions. The precise Queensland determining body is not clear. The Appeal Panel referred to these cases in the following terms:

> "21….Racing Appeals Authority Queensland … The Appeal of Mrs Julie Nash, a decision handed down 8 January 2001, the Authority described training in the following way:
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> > "There is no single action that provides and defines the concept of training a racehorse. Training encompasses a range of tasks that collectively make up the practice of training a thoroughbred. These include feeding, grooming, caring, stabling, treating, exercising, setting trackwork regimes, assessment of form, nominating, accepting and an increasing list of singularly minor tasks. A trainer that participates in all the tasks can, when considered collectively, make up the practice of training."
>
> "22….Racing Appeal Authority in the Appeal of Robert Heathcote, delivered on 18 June 2002:

> "As has been commented on above, there are numerous tasks which make up the training of a racehorse. To these should be added that the essential matter which relates to who is the person training a racehorse, is who is the person in "control" of the horse. The meaning of "control" in this context is simply not the physical control of the horse but who has the dominance in those non-exhaustive activities referred to in the decision of Nash that make up the act of training"."

79. The Tribunal comes to the conclusion on those facts and principles, in agreement with the Stewards and the Appeal Panel, that Vasili undertook sufficient of the tasks of a trainer that he was a trainer of the horses. That does not mandate a finding that he was the only trainer. Karakatsanis also performed some training functions. Vasili had sufficient dominance of control to have been training.

The Real Issue

80. Did Vasili hold out Karakatsanis to be the trainer?

81. The two facts argued by the respondent are that he so held out Karakatsanis to Racing NSW and the track supervisor at Warwick Farm.

The Holding Out to Racing NSW

82. This holding out is particularised as being through the filing of stable returns with Racing NSW.

83. The stable returns are in evidence. No other facts about the stable returns and the procedures are in evidence. An example of a stable return is that which related to the horse *Never Been Another*. There are four documents in relation to that horse, three of which are entitled "stable return" and one "horse form history".

84. The first stable return is dated 9 March 2016 and is lodged by “Online Trainer” and notes the owner as A. Vasili and the trainer as Michael Freedman at Rosehill. The next return is dated 9 August 2016 and is lodged by “Online Trainer” and the reason the horse has left stable is “Transferred to another racing stable” and notes the owner as Vasili. The third return is dated 16 August 2016 and lodged by “Online Trainer” and the trainer is named as Karakatsanis. The documents for the other horses are in similar terms but for different dates.

85. The dates vary for the four horses for which stable returns were lodged. For *Never Been Another* either 9 August and 16 August; for Lord Marmaduke, 11 July; for Tears Of Gold, 7 July and 15 July; for Once We Were Warriors, 7 July; for the unnamed filly no stable return was lodged.

86. The evidence given by Karakatsanis is that he lodged the stable returns himself. In cross-examination before the Appeal Panel Karakatsanis agreed that he did not complete the stable returns at the time of the transfer because he was “completely unaware of the requirement to do so”. He also expressed to the Appeal Panel his belief that as both stables were at Warwick Farm there was no need for hm to do so. He acknowledged in his evidence by the words “Yes, I did” that he lodged the stable returns when he became aware that he had to do so.

87. There is no evidence that Vasili spoke to, or gave advice to , or in any other way gave his input into the lodgement of those stable returns.

88. Vasili was cross-examined about his knowledge in relation to the stable returns. Vasili stated to the Tribunal that he knew the reason for a stable return was to identify who was in charge. He stated that when he was licensed previously as a trainer there were no online forms to use and the procedure was simply to make a telephone call to the regulator to notify whether a horse was in or out of a stable.

89. There is a need to infer from that evidence that Vasili was actually aware of what Karakatsanis was doing, or what was done on his behalf, on the lodgement of those stable returns.

90. A knowledge that a stable return would be required by Karakatsanis is as high as the evidence can be assessed.

91. It was Vasili's evidence that it was Karakatsanis's job to lodge the stable returns and that he knew that that would happen.

92. It is necessary to assess that evidence in the context of all the facts and circumstances here as to what each of the two people was actually doing, bearing in mind the allegation by the respondent of dummy training.

93. There is the further key fact that Karakatsanis was a licensed trainer. In addition, he was contracted to perform training functions. So that when Karakatsanis did lodge a stable return saying he was the trainer, that would not be improper, if that was all that was required.

94. But that is not what is required for a stable return.

95. The Tribunal was not taken to the Rules and the definitions that apply to the making of a stable return.

96. The old Rule of Racing 1 defines a stable return as:

> "means a notification submitted by a trainer, containing such information required by the rules in respect of each horse under his care, control and superintendence; and thereafter from time to time supplemented by amending notifications in the event of any alterations to the information previously submitted."

97. AR54 provides:

> "(1) The trainer of a horse must within 48 hours of its entering or leaving his stable lodge a stable return containing such information as required by the Principal Racing Authority …
> (3) When a stable return for a horse has been duly lodged the trainer shall immediately lodged an amended stable return when any particulars on the previous return have changed.

(4) [provides a penalty regime]."

98. It is to be noted also that the old rule LR 39 requires a stable return as part of an entry for a race meeting and the need for completion if a horse is to be entered for a race on an appropriate stable return and critically:

> "(4) The trainer of a horse must:
> (a) disclose the location of a horse under his or her care upon request by Racing NSW;
> (b) lodge an amendment to a stable return immediately if:
> (i) any particulars on the stable return have changed, or
> (ii) a horse leaves or joins his or her stable with the amendment to disclose the precise location of the horse."

The Local Rule continued in relation to penalties for breaches.

99. AR56 requires a stable return to contain names of owners of horses and trainers and other matters.

100. Therefore, it is obvious that a stable return requires the stable, not just the trainer, to be notified and a reading of LR 39 makes clear the stable return enables Stewards to know where a horse actually is located, that is, whose stable it is in.

101. Here the stables were those of Vasili, not Karakatsanis. Karakatsanis was a trainer only.

102. Karakatsanis was in breach of some of these rules requirements when he did not lodge the returns and when he did lodge the returns. He was not stabling the horses.

103. Regardless of those matters, the respondent cannot establish directly that Vasili participated in the actions of Karakatsanis when he lodged the stable returns. It is established that Vasili knew a stable return was about a horse being in and out of a stable.

104. Therefore, it is proved that Vasili knew Karakatsanis was to lodge a stable return and it was his, Karakatsanis's, duty to do so. It is established that Vasili knew

a stable return related to a horse in and out of a stable. It is established that Vasili knew the horses were in his stable and not those of Karakatsanis.

105. Therefore, Vasili must know that if Karakatsanis lodged a stable return stating that the horses were stabled with Karakatsanis, it must be incorrect.

106. But there is no evidence that Vasili turned his mind to that error or that he actually knew that Karakatsanis had actually lodged the returns. There is no evidence that Karakatsanis told him he was doing so or what the returns might state.

107. Can it be implied from all of that evidence with Vasili's involvement in training and other actions that he was holding out Karakatsanis as the trainer because Karakatsanis lodged an incorrect stable return or, indeed, a stable return per se?

108. It can be established he should have known the stable return was in error.

109. But does the wrong notification of the stable where the horses were located become elevated to a holding out of Karakatsanis as the trainer?

110. Karakatsanis was a trainer of the horses by arrangement, even if not solely the trainer. There has been no admission of deceitful conduct. To be improper the wrong conduct must be established on an objective test.

111. The Tribunal cannot be comfortably satisfied that all of these facts establish by the lodgement of the stable return such an implied holding out.

112. It could be just an error or oversight or carelessness by Vasili.

113. Objectively viewed on a reasonable person test, with knowledge of what was in Vasili's mind, the evidence does not go far enough.

114. This oral particularisation of the written particulars is not established when considered on its own.

115. When all the facts and circumstances of their conduct are taken into account, there is not elevated, on an objective finding, an aspect of impropriety. There is not the necessary comfortable satisfaction.

Holding Out to Warwick Farm on Trackwork

116. This is particularised as holding out to the trackwork supervisor that Karakatsanis was the trainer. This was not examined factually before the Stewards or the Appeal Panel. As set out earlier, it was raised for the first time on this appeal.

117. There is, therefore, new evidence and old evidence to be examined.

118. The trackwork supervisor's notes are in evidence. They are dated from 5 July to 13 August 2016 comprising 15 pages.

119. The supervisor's notes have Karakatsanis listed as one of many trainers. On various dates a mark is made on those notes. The evidence implies that that is a mark for each horse presented for trackwork on that date by a trainer.

120. No horse names are given, nor the rider, nor the name of a trainer present.

121. The supervisor or the author of the document has given no evidence about the process of trackwork or of marking the document.

122. There is no evidence of any conversation with riders, trainers or anyone presenting a horse as to how a horse is identified at trackwork or what may be required before a horse may enter the track for trackwork or, indeed, who is entitled to do so. There is no evidence on the actual marking of the note.

123. It may be inferred a licensed person, presumably a licensed trainer, is required as the form names trainers.

124. Saddle cloths of individual trainers may be required. There is no evidence of this other than Vasili's agreement they may be required. If there was a saddle cloth needed, no evidence of any checking mechanism of such a saddle cloth is given.

125. Assuming a saddle cloth was used by Karakatsanis on each relevant occasion, there is no evidence of who put it on, who saw it, what it says or on what occasions.

126. Therefore, Vasili's participation needs to be examined.

127. Vasili gave evidence that he knew he needed a track to train and that training was taking place at Warwick Farm because he gave the trackwork rider Cassidy instructions on what to do.

128. Vasili also maintained he could train by trackwork elsewhere, but this is irrelevant to the issues.

129. It was put to him he needed to use his stables at Warwick Farm to do trackwork at Warwick Farm. He first answered that he did not know he needed a licence for trackwork

130. He was questioned on training generally to establish that what he was doing at Warwick Farm was in fact trackwork using his stable for that purpose. He then answered he knew he needed a licence to do so and would not himself use Warwick Farm for trackwork without one.

131. Critically, when knowing saddle cloths were used at trackwork to enable the trackwork supervisor to know who a trainer was, he stated he was not ever present for the subject horses at trackwork. He stated he does not go to trackwork. He did not do anything at the actual trackwork to mislead the supervisor.

132. He accepted that the trackwork supervisor would need to see a saddle cloth or see the trainer or see the known stable rider before trackwork could be allowed.

133. Again, a most important fact was Vasili's opinion that all the trackwork was allowable because Karakatsanis was a trainer of the horses, therefore, Karakatsanis had a right to use the track for trackwork.

134. Therefore, it was submitted that the markings by the trackwork supervisor on the trackwork record in Karakatsanis's name was a permissible outcome.

135. The respondent says this is an inference case.

136. The cross-examination of Vasili establishes that he was: competent to train; wanted to be a trainer; was not yet such as his application was still on foot; knew he needed a licence to do trackwork; he knew he needed a track to do so. It is established further that he knew horses in his stable at Warwick Farm were undertaking trackwork at the proximate Warwick Farm track. He conceded that if he was licensed he would train at Warwick Farm.

137. But it must be found also that he knew Karakatsanis was a trainer who occasionally himself rode trackwork at Warwick Farm.

138. Therefore, it was submitted on all those facts and circumstances that having regard to all that Vasili did and the little that Karakatsanis did, it should be concluded Vasili needed Karakatsanis so he could train by trackwork at Warwick Farm. It was submitted that that was the arrangement and it needed Vasili to hold out Karakatsanis in that sense because he, Vasili, was not licensed.

139. Vasili's case is that Vasili had a contract with Karakatsanis to train and that Karakatsanis did some training functions, Therefore, it was submitted that any representation by Karakatsanis was permissible because he was a trainer of the horses.

140. There is no evidence that Vasili and Karakatsanis together, or through others, discussed or arranged a misleading of the supervisor at Warwick Farm trackwork.

141. On the face of those findings and actions, on the direct evidence available and taking into account all of the relevant facts and circumstances in the case generally, the Tribunal finds that the inference cannot be established.

142. The fact that Vasili did some acts which a trainer might do does not remove Karakatsanis's rights as a licensed trainer with an agreement with the owner Vasili to train and to exercise that right at Warwick Farm.

143. This was not, therefore, a dummy training.

144. Therefore, the holding out to the trackwork supervisor at Warwick Farm is not established.

145 This oral particularisation of the written particulars is not established when considered on its own.

146. When all the facts and circumstances of their conduct are taken into account, there is not elevated, on an objective finding, an aspect of impropriety. There is not the necessary comfortable satisfaction.

147. There is no impropriety established on this oral particular of the written particulars.

Other Matters Raised

148. Both before the Stewards and the Appeal Panel and in submissions before the Tribunal issues to do with pre-training or training were canvassed in detail based upon the meaning of AR 56A and LR 39A relevant at the time.

149. These issues do not have to be decided on the particulars pleaded, the alleged breaches and the relevant facts.

150. There is no need to more closely analyse the submissions on the test of improper and intent to deceive as an ingredient in AR 175(a).

151. There is no need to more closely analyse the submissions or the tests on whether there was action or practice as required by AR 175(a).

Conclusion

152. The individual particulars orally advanced of the holding out to Racing NSW and the track supervisor at Warwick Farm are not found established.

153. When the two ingredients orally particularised are considered in isolation, or individually, with all of the facts and circumstances, no such conclusion is reached. When the two ingredients are considered together but in isolation from the other facts and circumstances, no such holding out is established. When the two ingredients are considered together and in conjunction with all the other facts and circumstances, no such inferences are established.

154. The oral particulars are not established.

155. The written particular of impropriety by a holding out of Karakatsanis as the trainer of the horses is not established.

156. The particularisation and the allegation of improper practice is not established.

157. The alleged breach of AR 175(a) is not established.

158. The appeal by Vasili against the decision of the Appeal Panel is upheld.

Future Conduct

159. It is noted that the appeal by Racing NSW against the penalty decision of the Appeal Panel will not now arise for consideration because the breach to which that penalty attached has not been found established.

160. Issues about the refund of the appeal deposit now arise for consideration.

161. Neither party has been asked to make submissions on these two issues.

162. Accordingly, unless within seven (7) days of the receipt by Racing NSW of a copy of this Decision it does not make an application for determination of penalty on its appeal or does not make a submission against the refund of the appeal deposit, then, without further order, the Tribunal will find that the appeal by Racing NSW against the penalty decision of the Appeal Panel is dismissed and it will order that the appeal deposit be refunded.