RACING APPEAL PANEL NEW SOUTH WALES

IN THE MATTER OF THE APPEALS OF MR CON KARAKATSANIS AND MR ANGELIS VASILI

Appeal Panel:	**Mr R. Beasley SC – Principal Member; Mr R. Clugston; Mr K. Langby**
Date of hearing:	**20 February 2017**
Date of decision:	**2 March 2017**
Appearances	**Mr Karakatsanis: Mr M. Pesman SC, instructed by Mr John Carmody.** **Mr Vasili: Mr D. Hume, instructed by Mr W. Pasterfield.** **Racing New South Wales: Mr M. Van Gestel, Chairman of Stewards.**

REASONS FOR DECISION

Introduction

1. On 16 August 2016 Mr P. Dingwall, the Deputy Chairman of Stewards of Racing New South Wales, conducted an interview with licensed trainer Mr Con Karakatsanis at stables situated at 12 Munday Street, Warwick Farm, near the Warwick Farm Racecourse and Training Complex. Also interviewed by Mr Dingwall were Mr G. Sood, a licensed stable hand, and Mr Q. Cassidy, a licensed track work rider. The interviews concerned five racehorses that were owned by Mr Angelis Vasili. The stables at 12 Munday Street are owned by Mr Vasili. Mr Karakatsanis trains horses at nearby stables in Bull Street, Warwick Farm.

2. The purpose of the interview on 16 August 2016 and the subsequent Stewards' Inquiry was to ascertain who in fact was the trainer of the five racehorses. Stable returns indicated that Mr Karakatsanis was the trainer. The issue inquired into by

the Stewards was whether Mr Vasili, who is not a licensed trainer, was in fact training the five horses and not Mr Karakatsanis.

3. On 24 August 2016 Mr Karakatsanis was charged by Stewards under AR 175(a) of committing the "improper practice" of holding himself out as the trainer of the five horses when those horses were in fact being trained by Mr Vasili. The full particulars of the charge made against Mr Karakatsanis are as follows:

> *Licensed trainer Mr Con Karakatsanis, you are hereby charged with committing an improper practice under AR 175(a).*
>
> *AR 175 The Principal Racing 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 Con Karakatsanis, committed an improper practice in connection with racing in that, during the period on or about 7 July 2016 and 16 August 2016, you improperly held yourself out (and knowingly permitted Mr Angelis Vasilis to hold yourself out) to be the trainer of the racehorses owned by registered owner Mr Angelis Vasili detailed below, which were stabled at the property owned by Mr Vasili at 12 Munday Street, Warwick Farm, when Mr Vasili was in all the circumstances the trainer of those horses and he was not the holder of a current trainer's licence.*
>
> ***Details of Horses***
> *Never Been Another;*
> *Lord Marmaduke;*
> *Tears Of Gold;*
> *Once Were Warriors;*
> *2 year old filly Americain x Teralani.*

4. Mr Vasili was charged under the same rule. The full particulars of the charge against Mr Vasili are as follows:

> *Registered owner Mr Angelis Vasili you are hereby charged with committing an improper practice under AR 175(a).*
>
> *AR 175 The Principal Racing 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 7 July 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 licence trainer Mr Con Karakatsanis out to be the trainer of those horses.*
>
> ***Details of Horses***
> *Never Been Another;*
> *Lord Marmaduke;*
> *Tears Of Gold;*
> *Once Were Warriors;*
> *2 year old filly Americain x Teralani.*

5. On 12 September 2016 the Stewards found both Mr Karakatsanis and Mr Vasili guilty of the charges of committing an "improper practice" under AR 175(a). A four month disqualification was imposed on Mr Karakatsanis for his breach of the rule. Mr Vasili was also penalised by way of a 4 month disqualification.

6. Both Mr Karakatsanis and Mr Vasili lodged appeals to the Panel in respect to both the finding of guilt made against them, and against the severity of the penalty imposed.

Nature of Appeal and Evidence

7. These appeals are by way of a new hearing: s.43(1) *Thoroughbred Racing Act 1996*. Mr M. Pesman SC (instructed by Mr J. Carmody) was granted leave to appear for Mr Karakatsanis, and Mr D. Hume of counsel (instructed by Mr W. Pasterfield) was given leave to appear for Mr Vasili. Mr Marc Van Gestel, Chairman of Stewards, appeared for Racing NSW.

8. At the commencement of the appeal, the Appeal Books, containing the transcript of the Stewards' Inquiry, copies of various exhibits at that inquiry, and various records of interview was admitted by consent as Exhibit A on the appeal.

9. A statement of Mr Karakatsanis dated 15 February 2017 was admitted by consent as Exhibit B, and a statement of Mr Vasili dated 17 February 2017 was admitted by consent as Exhibit C. Oral evidence was given by both Appellants.

Factual Findings – who was the trainer of the five horses?

10. Before setting out our finding on this issue, some background matters should be briefly mentioned.

11. On 15 June 2016, Mr Vasili applied to Racing NSW for a trainer's licence. That application was refused in mid-August. Until late June 2016, Mr Vasili's horses (including the five horses particularised in the charges) were trained by Mr Vic Thompson, a licensed trainer. At around that time, Mr Thompson suffered a heart attack and was unable to continue to train. Mr Vasili needed a trainer for his horses until (he hoped) he was granted his own licence to train.

12. The five horses were transferred to Mr Karakatsanis in July 2016, and Mr Karakatsanis indicated to racing authorities that he was the trainer of the horses: see the stable returns of the horses trained by Mr Karakatsanis at Exhibits 3 and 4 of the Stewards' Inquiry, pages 21-26 of Exhibit A on the appeal.

13. There was little factual dispute between the parties concerning matters such as the training regime, feeding, management and treatment of the five horses. Ultimately, there was no substantial credit issue to be resolved by the Panel. The evidence revealed the following concerning the management and control of the five horses.

14. *First, in relation to the exercise/training regime of the five horses*, this was clearly set by Mr Vasili. Mr Karakatsanis had at best a rudimentary understanding or knowledge as to the horses' training regime. That was demonstrated by a table produced by Mr Van Gestel as an aid to the Panel which contained various references to the evidence given by Mr Karakatsanis, Mr Sood and Mr Cassidy in the interview conducted by Mr Dingwall on 16 August 2016. The answers given in that interview indicated that Mr Karakatsanis was not fully familiar with the exercise and training regime set for the five horses. Without labouring the point, but as

examples, Mr Karakatsanis said that on 16 August 2016 the horse *Never Been Another* did trot and canter work, whereas the track work rider Mr Cassidy informed Mr Dingwall that the horse had done half pace work over 5 furlongs. In relation to the horse *Once Were Warriors*, Mr Karakatsanis said that the horse did pacework over 1,000 metres on the Proride track, whereas in fact the horse did not work that morning. In relation to the two year old filly *Americain x Teralani*, Mr Karakatsanis said the horse did slow work or that he did not know what it was doing, whereas in fact the horse was resting in its box as it had an injured leg.

15. The evidence given at the Stewards' Inquiry revealed that there was no serious dispute that the instructions for the training regime for the five horses came from Mr Vasili: e.g. T-15.688. It is clear that Mr Karakatsanis played at most a minor role, if any, in setting the exercise/training program for any of the five horses: T-16.758-17.777; T 18.818.

16. *Secondly, in relation to the feeding of the five horses*, that too was a matter controlled by Mr Vasili: T-19.890-.920, 21.970-.990. Mr Karakatsanis had no input into the feeding of the horses: Exhibit 1 of the Stewards' Inquiry (16 August 2016 record of interview) at L200-210.

17. *Thirdly, in relation to veterinary care*, the evidence was that when required, three of the five horses were treated by Dr Robinson from the Randwick Equine Centre, a veterinary practice used by Mr Vasili, not Mr Karakatsanis: T 32.1515-34.1579.

18. *Fourthly, in relation to the engagement and payment of relevant staff*, such as the stable hand Mr Sood and the track work rider Mr Cassidy, this was all done by Mr Vasili: see generally T 22-26.

19. *Fifthly, the horses were stabled at stables owned by Mr Vasili*, and not at Mr Karakatsanis' stables in Bull Street. The Stewards were not advised by Mr Karakatsanis that he was "training" horses at a location other than the Bull Street stables: see AR 80F.

20. Based on the matters above, Mr Van Gestel submitted that it was clear that the five horses were trained by Mr Vasili, and not Mr Karakatsanis. In the course of those submissions, Mr Van Gestel first referred the Panel to the definition of *"trainer"* in the Australian Rules of Racing which is defined to mean *"a person licensed or granted a permit by a Principal Racing Authority to train horses, and includes any persons licensed to train as a training partnership"*. Of the two Appellants here, only Mr Karakatsanis held a licence to train.

21. Mr Van Gestel also referred the Panel to two decisions of the Racing Appeals Authority in Queensland which have dealt with the issue of what training a horse involves. In *The Appeal of Mrs Julie Nash*, a decision handed down on 8 January 2001, the Authority described training in the following way:

> *"There is no single action that properly 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 track work regimes, assessment of form, nominating, accepting and an increasing list of singularity minor tasks. A trainer that participates in all tasks can when considered collectively, make up the practice of training."*

22. On the same issue, Mr Van Gestel referred the Panel to the decision of the Racing Appeal Authority in *The Appeal of Robert Heathcote* delivered on 18 June 2002. Having quoted the above from *The Appeal of Nash*, the Authority in that case went on to say the following:

> *"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."*

23. The Panel accepts the submissions of Mr Van Gestel in relation to who was the actual trainer of the five racehorses. The Panel is comfortably satisfied that in setting the training and exercise regime, the feeding, in making payments to relevant

staff and arranging for veterinary care, and also in having the horses stabled at his own stables, Mr Vasili, although an unlicensed person, was clearly "training" the horses and had control over them. Mr Karakatsanis, a licensed trainer, who had held himself out to the racing authorities as being the trainer of the five horses, was not in fact training them.

24. The real issue for resolution on these appeals is whether these largely uncontroversial factual matters amount to conduct by the Appellants that is an *"improper practice"* within the meaning of AR 175(a).

Construction of AR 175(a)

25. Although set out above, it is convenient to repeat that the relevant rule allows a Principal Racing Authority or Stewards to penalise any person *"who, in their opinion, has been guilty of any dishonest, corrupt, fraudulent, improper or dishonourable action or practice in connection with racing"*. What is alleged by Stewards in the charges against Mr Karakatsanis and Mr Vasili is that they each engaged in an *"improper practice".*

26. *"Improper practice"* is not defined in the rules. In the Macquarie Dictionary, the word *"improper"* is defined to mean:

> *"1. Not proper; not strictly belonging, applicable, or right: an improper use for a thing. 2. Not in accordance with propriety of behaviour, manners, etc, improper conduct. 3. Unsuitable or inappropriate, as for the purpose or occasion: improper tools. 4. Abnormal or irregular."*

27. In the course of his submissions as to the proper construction of the rule, Mr Van Gestel referred the Panel again to *Nash* where the following view was expressed about AR 175(a):

> *"The term "improper practice" is not defined by the Rules of Racing. The term "improper" is to be interpreted disjunctively in relation to the other words contained in AR 175(a) such as "dishonest", "corrupt" and "fraudulent" (see Gollan/SEQRA Racing Appeals Authority 22/1/99)."*

28. Mr Pesman SC and Mr Hume submitted to the Panel that we should not follow *Nash* insofar as that decision held that the term "improper" should be interpreted disjunctively in relation to the other words contained in AR 175(a). The submission of the Appellants was that the proper meaning of the term *"improper practice"* in the rule is informed in part by the words *"dishonest"*, *"corrupt"*, *"fraudulent"* and *"dishonourable"*. Their submission was that an "improper practice" in the context of the other words in the rule could not be a reference to minor matters, but only to practices that could be considered seriously improper.

29. With respect to the approach taken by the Racing Appeal Authority in *Nash*, we are not persuaded that the term "improper" in AR 175(a) should be interpreted disjunctively from the other operative words of the rule. On the contrary, we consider that the word "improper" in AR 175(a) should be construed in the context of the other words in the rule – namely, "dishonest", "corrupt", "fraudulent" and "dishonourable". These are clearly directed to serious matters of deceit, deception, untruthfulness and the like. A matter that was in a minor way inappropriate or not in accordance with accepted standards, would not in our view amount to an "improper practice" within the meaning of AR 175(a).

30. Mr Van Gestel sought support for the "disjunctive" approach by reference to AR 137(a) which provides that a rider can be penalised if he/she is guilty of *"careless, reckless, improper, incompetent or foul riding"*. The Panel considers that this rule, which relates to various grades of riding that may attract a penalty, does not assist in interpreting AR 175(a).

31. In our view then, in order to be an "improper practice" under AR 175(a), a practice must be a serious matter which has some of the flavour of dishonesty, corruption, fraud or dishonourable-type conduct consistent with these other operative words of the rule.

Was the conduct of the Appellants an "improper practice" within the meaning of AR 175(a)?

32. Mr Pesman SC and Mr Hume submitted that not only was the conduct of the Appellants here not in breach of AR 175(a), their conduct was in fact permissible under the Rules.

33. In support of this submission, the Panel was first directed to AR 56A which is in the following terms:

> *AR 56A. No horse, if in Australia, shall be entered for or run in any race or official trial or jump out unless it is trained by a person with a licence or permit to train. Provided that this rule shall not apply to a horse entered for a race the entries of which close more than 60 days prior to the advertised date for the running of such race. Further provided that this rule shall not apply to any other race exempt under the Rules.*

34. The evidence was that all of the five horses were more than 60 days from racing. Mr Pesman SC and Mr Hume submitted that as none of the horses were to race within 60 days, it was permissible for them to be trained by a person who did not have a licence to train.

35. It was further submitted that there is no rule in the Australian Rules of Racing which prohibits a person from training horses at least 60 days out from a race without a licence to train.

36. The Panel does not accept that AR 56A permits a person to hold himself/herself out to the racing authorities as being the trainer of a horse in circumstances where they are not, simply because the horse may be more than 60 days from starting in a race. Further, AR 56A does not permit a person who is actually training a horse from holding someone else out to be the horse's trainer in similar circumstances concerning the length of time out from a race. AR 56A is simply a rule that allows non-licensed persons to <u>enter</u> a horse in races when entries *"close more than 60 days prior to the advertised date for the running of such race"*.

37. The Appellants also drew the Panel's attention to Local Rule 39A which is in the following terms:

> *LR 39A. A trainer must adhere to the following conditions pertaining to the pre-training of racehorses:*
>
> *(i) The notified trainer of a horse shall ensure that any horse being pre-trained must be returned to his/her care, control and supervision at his/her registered stable address no later than two weeks prior to such horse competing in an official trial and no later than one month prior to it competing in a race.*
>
> *(ii) The trainer shall ensure that the owner of the horse being pre-trained is fully acquainted with the details of the pre-training arrangement including the location of the horse and with a full disclosure of associated costs.*
>
> *(iii) Should any provisions of sub-rules (i) and (ii) not be complied with the trainer concerned may be penalised and Racing New South Wales may withdraw such horse from any trial or race engagement.*

38. The Panel considers that this local rule has no relevance to the facts of this case. The five horses here were not in "pre-training". They were being trained at stables adjoining a racetrack and training complex. They may have been in the early stages of their preparation for racing, but they were not pre-training. Some were doing trot and canter work, some were doing pace work. Further, Local Rule 39A has no relevance to the situation where a licensed trainer has lodged returns with a racing authority indicating that he is the trainer of horses when he is not in fact training those horses. Equally, Local Rule 39A has no application where the owner of horses, who is actually training them as an unlicensed person, has allowed another trainer to notify a racing authority that he is training the horses when he is not.

39. Mr Pesman SC and Mr Hume also submitted that the conduct of the Appellants, when viewed in totality, was not of a kind that was sufficiently serious as to amount to "improper practice" within the meaning of that term in AR 175(a). They both pointed to a number of matters in support of this contention, which included the following:

(a) The public was not misled by the conduct of either Mr Karakatsanis or Mr Vasili. For example, no member of the public had placed any money on the horses thinking that they were trained by one person when they were in fact being trained by another.

(b) In relation to Mr Vasili, it was submitted that he found himself in very difficult circumstances concerning the sudden inability of Mr Thompson to train his horses. He sought what he hoped would be a short-term fix to this problem by sending them to Mr Karakatsanis. To the extent that he did not keep Mr Karakatsanis fully informed as to the manner in which he wanted the horses trained, and in relation to other details concerning their management, he did this because he did not want to burden Mr Karakatsanis with these matters because he knew that Mr Karakatsanis was going through some difficult personal circumstances with a relationship breakup.

(c) All of the horses were well fed, well cared for and received proper veterinary care when needed.

(d) A proper training/exercise regime was put in place.

(e) Mr Karakatsanis did have some involvement in the training of the horses and in fact rode two of them in track work.

(f) It was submitted that other high profile owners have an extensive degree of involvement in setting the training routine of their horses.

40. The Panel generally accepts the matters referred to in [39] above (with the exception of (f), in relation to which there is insufficient evidence before the Panel for it to make any proper finding). However, we find that Mr Karakatsanis clearly held himself out to a racing authority and to the Stewards as being the trainer of horses that he was not in fact training. In our view, this is clearly an *"improper practice"* within the meaning of that term in AR 175(a). The Panel is comfortably satisfied that a licensed trainer who holds himself/herself out to a racing authority and to Stewards as being the trainer of horses that he is not in fact training has engaged in

serious misconduct that falls within the meaning of *"improper practice"* in AR 175(a).

41. Equally, Mr Vasili's conduct, in allowing Mr Karakatsanis to hold himself out as the trainer of the five horses when it was in fact Mr Vasili who was actually training them, is also serious misconduct of the kind that in our view constitutes an "improper practice" within the meaning of AR 175(a).

42. For these reasons, the Panel dismisses the appeals in relation to the findings of guilt made by the Stewards.

Penalty – Mr Karakatsanis

43. Mr Karakatsanis' conduct involved a serious breach of the Rules. The Panel accepts the submission of Mr Van Gestel that general deterrence for such an offence would in most cases demand a penalty involving a disqualification. Ordinarily, a licensed trainer who holds himself/herself out as someone training a horse when they are in fact not in truth training that horse can expect a penalty of a disqualification, and for a lengthy term.

44. However, there are a number of matters in mitigation that were raised by Mr Pesman SC on Mr Karakatsanis' behalf. They include the following:

(a) While the racing authorities were for some time misled by Mr Karakatsanis' conduct, the public was not. For example, the position was never reached where the public ever placed bets on the horses thinking that they were trained by Mr Karakatsanis when they were in fact trained by Mr Vasili. The Panel accepts that because of this, this case falls short of the most serious of its kind.

(b) There is no suggestion that the horses were not properly cared for, or properly trained and managed. The evidence suggests that they were.

(c) It is submitted that Mr Karakatsanis' conduct could be put down to an attempt to assist Mr Vasili with a difficult problem where he had suddenly lost his regular trainer.

(d) While intent is not relevant to guilt, the submission was made that Mr Karakatsanis did not know what he was doing was a breach of the rules and that there was certainly no malign intent in what he was doing. The overall intent of Mr Karakatsanis was to help a friend and not breach the rule.

(e) While Mr Karakatsanis was not completely familiar with the training regime set by Mr Vasili, he did have some involvement in the horses' work, including riding track work.

45. Mr Karakatsanis has no relevant record for a breach of the rule in circumstances such as these. Further, the Panel accepts the submission that a four month disqualification would have a devastating effect on his business as a horse trainer.

46. Taking into account the various matters that we need to in sentencing, including general deterrence, in the Panel's view in the circumstances of this case a disqualification is too severe a penalty. The offence is serious because the racing authority and the Stewards have been misled for a period of time, but it is by no means the most serious type of offence of this kind for the reasons stated, and there are mitigating factors. In lieu of a disqualification, the Panel would impose a suspension. Further, we consider the appropriate period for that suspension is two months and not four months.

47. In relation to Mr Karakatsanis then, we allow the appeal against the severity of sentence. In lieu of a four month disqualification, we impose a suspension of two months.

Penalty – Mr Vasili

48. Many of the matters raised in mitigation for Mr Karakatsanis apply to Mr Vasili.

49. Mr Vasili found himself in a difficult situation with his horses after Mr Thompson became unwell. He perhaps hoped that he would only need Mr Karakatsanis to have the horses for a short period of time prior to him being granted his own licence to train. The Panel has also taken into account the matters of hardship that a disqualification would cause to Mr Vasili in relation to his business that are set out from paragraph 31 of his statement (Exhibit C).

50. Again, although this is a serious offence, for similar reasons relating to Mr Karakatsanis, it is by no means the most serious of its kind.

51. Mr Vasili is not a licensed person and so the Panel cannot impose a suspension. As we consider a disqualification to be too severe a penalty, Mr Vasili will be penalised by way of a fine. None of the precedents provided to the Panel are analogous to the circumstances here. Taking all matters into account, the Panel imposes a fine of $10,000.

52. Mr Vasili's appeal against the severity of sentence is allowed. In lieu of a four month disqualification, we impose a fine of $10,000.

Further Matters

53. Mr Hume for Mr Vasili asked the Panel to make an order that these Reasons for Decision not be published. He sought such an order under s.44(1)(d) of the *Thoroughbred Racing Act* which provides that the Panel on appeal may *"make such other order in relation to the disposal of the appeal as the Appeal Panel thinks fit".*

54. The Panel does not consider that this subsection empowers it to give a direction to Racing New South Wales about what it can or cannot publish. What the Panel will do, however, is request (and we can do no more than that) that Racing NSW not publish these Reasons for Decision for a period of seven days from the date of these reasons to enable Mr Vasili to make representations to Racing NSW concerning that matter.

55. Mr Pesman SC for Mr Karakatsanis also informed the Panel that his client had another appeal before a differently constituted panel that was heard on 21 February

2017. He indicated he may seek orders for concurrent sentencing depending on what happens in both appeals. We were advised that the other matter before the Panel arises out of different factual circumstances than those in this case, but occurred at approximately the same time. For the time being, however, all the Panel can do is note that such an application may be made to it at a relevant time.

56. The orders of the Panel are as follows:

Mr Karakatsanis:

(1) Appeal against finding of guilt is dismissed.

(2) Finding of guilt in relation to breach of AR 175(a) is confirmed.

(3) Appeal against severity of sentence is upheld.

(4) In lieu of a penalty of four months' disqualification, a penalty of a suspension for two months is imposed. That suspension will commence on Monday 6 March 2017 and will expire at midnight on 5 May 2017, after which time Mr Karakatsanis will be free to train.

(5) Appeal deposit is forfeited.

Mr Vasili:

(1) Appeal against finding of guilt is dismissed.

(2) Finding of guilt in relation to breach of AR 175(a) is confirmed.

(3) Appeal against severity of sentence is upheld.

(4) In lieu of a penalty of four months' disqualification, a monetary penalty of $10,000 is imposed.

(5) Appeal deposit is forfeited.

Note: Racing New South Wales is requested not to publish these Reasons for Decision for seven (7) days from the date of these Reasons to enable Mr Vasili to make representations to it concerning such publication.