RACING APPEALS TRIBUNAL NEW SOUTH WALES

TRIBUNAL MR DB ARMATI

EX TEMPORE DECISION

WEDNESDAY 6 APRIL 2016

LICENSEES GREG TANTI AND PETER TANTI

AUSTRALIAN HARNESS RACING RULE

DECISION: 1. Appeals dismissed
2. Orders made for penalty submissions

1. Mr Greg Tanti and Mr Peter Tanti appeal against decisions of the stewards to impose upon them periods of disqualification for breaches of various rules.

2. By letter of 10 November 2015, the stewards set out to Mr Greg Tanti the following charges and particulars:

CHARGE 1.

Mr Greg Tanti being a trainer licensed by Harness Racing New South Wales (HRNSW) are hereby charged pursuant to Australian Harness Rule 193(1) and (7).

AHRR Rule 193(1) states; "A person shall not attempt to stomach tube or stomach tube a horse nominated for a race or event within 48 hours of the commencement of the race or event." AHRR Rule 193(7) states; "A person who fails to comply with sub rules (1), (2) or (3) is guilty of an offence."

The particulars of the charge are – Mr Greg Tanti being a Trainer licensed by HRNSW at the registered stables at 60 West Parade, Riverstone on Tuesday, 8 September, 2015 did make an attempt to stomach tube the horse IWILLDEFY NZ which on that evening was entered to race at Tabcorp Park Menangle in Race 8 scheduled to start at 6.15pm, being in contravention of Rule 193(1).

CHARGE 2, issued as alternate to CHARGE 1.

Mr Greg Tanti being a trainer licensed by Harness Racing New South Wales (HRNSW) are hereby charged pursuant to Australian Harness Rule 193(3) and (7).

AHRR Rule 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 Rule 193(7) states; "A person who fails to comply with sub rules (1), (2) or (3) is guilty of an offence."

The particulars of the charge are – Mr Greg Tanti being a Trainer licensed by HRNSW at the registered stables at 60 West Parade, Riverstone on Tuesday, 8 September, 2015 did cause to administer medication to the horse IWILLDEFY NZ which on that evening was entered to race at Tabcorp Park Menangle in Race 8 scheduled to start at 6.15pm, being in contravention of Rule 193(3).

3. By letter of 10 November 2015, the stewards set out to Mr Peter Tanti the charges and particulars:

CHARGE 1.

Mr Peter Tanti being a trainer licensed by Harness Racing New South Wales (HRNSW) are hereby charged pursuant to Australian Harness Rule 239A.

HR Rule 239A states; “A person whose conduct or negligence has led or could lead to a breach of the rules is guilty of an offence.”

The particulars of the charge are – Mr Peter Tanti, being a Trainer licensed by HRNSW and the Trainer of the horse IWILLDEFY NZ, on Tuesday, 8 September, 2015 were negligent in the presentation of that horse to race in Race 8 at Tabcorp Park Menangle on that evening in that Mr G Tanti did on that day at the registered stables at 60 West Parade, Riverstone make an attempt to stomach tube the horse, in contravention of Rule 193(1).
For your information, HR Rule 193(1) states; “A person shall not attempt to stomach tube or stomach tube a horse nominated for a race or event within 48 hours of the commencement of the race or event.”

CHARGE 2, issued as alternate to CHARGE 1.

Mr Peter Tanti being a trainer licensed by Harness Racing New South Wales (HRNSW) are hereby charged pursuant to Australian Harness Rule 193(3) and (7).

AHRR Rule 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 Rule 193(7) states; “A person who fails to comply with sub rules (1), (2) or (3) is guilty of an offence.”

The particulars of the charge are – Mr Peter Tanti being a Trainer licensed by HRNSW and the Trainer of the horse IWILLDEFY NZ, at the registered stables at 60 West Parade, Riverstone on Tuesday, 8 September, 2015 did allow the administration of medication to the horse IWILLDEFY NZ which on that evening was entered to race at Tabcorp Park Menangle in Race 8 scheduled to start at 6.15pm, being in contravention of Rule 193(3).

4. Before the stewards, each of the appellants did not admit the breaches of the rules. Inquiries were conducted on 13 and 29 October 2015 and as a result of that, by letter of 11 January 2016, for Mr Peter Tanti, an adverse finding in respect of Charge 1 only was made, and in respect of Mr Greg Tanti, by letter of 14 January 2016, an adverse finding in respect of Charge 1 only was made. Each was invited to make submissions on penalty.

5. By letters notifying penalty decisions of 12 February 2016, Mr Peter Tanti was disqualified for 2 years and 3 months and Mr Greg Tanti for 3 years.

6. The appellants, in lodging their appeals, appeal against both the findings of 11 and 14 January respectively and the penalties of 12 February respectively.

7. The evidence has comprised the transcripts and exhibits before the stewards, a short video taken when the stewards arrived at premises on 8 September 2015, oral evidence of Dr Colantonio, the Regulatory Vet for Harness Racing NSW, and the steward who visited the premises, Mr Paul.
In submissions, the respondent notes that neither appellant has given evidence before the Tribunal. Importantly, that evidence comprises not just the transcripts of the stewards' inquiries 13 and 29 October, but also of the transcript of the interview conducted by steward Paul on 8 September 2015 with Mr Greg Tanti at the premises of Mr Peter Tanti, and a record of interview with Mr Peter Tanti conducted by telephone on the same date.

8. It is common ground in these proceedings that the facts identify a circumstantial evidence case and there is no dispute as to the law required to be considered in respect of a circumstantial evidence case. The appellant Mr Tanti has also drawn upon Kirk v The Industrial Court of NSW, High Court of Australia decision [2010] HCA 1 at 26 in part quoted as follows:

> "The common law requires that a defendant is entitled to be told not only of the legal nature of the offence with which he or she is charged, but also of the particular act, matter or thing alleged as the foundation of the charge[22]. ….The common law requirement is that an information, or an application containing a statement of offences, "must at the least condescend to identifying the essential factual ingredients of the actual offence"[26]. …..In Johnson v Miller, Dixon J considered that an information must specify "the time, place and manner of the defendant's acts or omissions"[28]….."

9. And in particular, Samaan bht Samaan v Kentucky Fried Chicken [2012] NSWSC 361 and the parts relied upon By Mr Peter tanti are as follows:

> 18 While it is trite law, it should be noted that essentially two elements are required for the balance of probabilities to be satisfied: a court is required not only to conclude that it is more likely than not that the version of the facts in issue existed; it is also required to conclude that the material before it is appropriate to make that finding of fact. The facts and circumstances of the case presented to the Court must provide an appropriate basis to persuade the Court that there was a reasonable likelihood of their existence.
>
> 19 What this means is that a belief or disbelief in two probabilities 'exactly balanced' will not satisfy the test (Carney v Newton at [61]; Bell v Thompson [1934] NSWStRp 34; (1934) 34 SR (NSW) 431).
> Likewise, disbelief in a moving party's version of facts does not mean that the opposing party's case has been established (Jackson v Lithgow

City Council [2008] NSWCA 312 at [11] - [12]). Further, the inability of a court to make a finding either way will not discharge the burden of proof on the moving party: Kuligowski v Metrobus [2004] HCA 34; (2004) 220 CLR 363 at [60].

20 Section 140(2) requires the court to take into account "the gravity of the matters alleged". Dixon J in Briginshaw v Briginshaw [1938] HCA 34; (1938) 60 CLR 336 at 361 - 362 stated:

> "[W]hen the law requires proof of any fact, the tribunal must feel an actual persuasion of its occurrence or existence before it can be found. It cannot be found as a result of a mere mechanical comparison of probabilities independently of any belief in its reality... it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal."

21 In Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd [1992] HCA 66; (1992) 67 ALJR 170; (1992) 110 ALR 449, Mason CJ, Brennan, Deane and Gaudron JJ suggested that the strength of the evidence necessary to establish a fact, on the balance of probabilities, may vary depending on what is sought to be proved. However that variability does not go to the standard of proof, rather it reflects conventional perceptions of the gravity of the allegations and the requisite conduct involved.

22 The Court of Appeal in Morley v Australian Securities & Investments Commission [2010] NSWCA 331 discussed the applicability of the Briginshaw principles in civil penalty proceedings and also considered "the gravity of the consequences" in relation to the standard of proof required where there is an issue as to an exercise of the court's jurisdiction to make an order sought. Although civil penalties are not at issue in this matter, the findings this Court is required to make may require some discreet evaluation with grave consequences, depending on the ultimate conclusion, for the defendant possibly beyond the confines of this matter and important consequences for the plaintiff. Therefore the Court of Appeal's analysis of the considerations required under s 140(2) of the Evidence Act are helpful:

> "[737] It is pertinent to note that, while s 140(2) requires these three matters to be taken into account, it permits other matters relevant to the formulation of the state of satisfaction to be taken into account. ...

[738] Dixon J's focus of attention in Briginshaw v Briginshaw was upon observations in certain authoritative legal texts which, with respect to the civil standard of proof, acknowledged that "the degree of satisfaction demanded may depend ... on the nature of the issue" (at 361). ...

[739] Although it has not been cited frequently in subsequent authority, no doubt because of the exceptional respect with which Dixon J is treated, the equivalent reasoning of Rich J in Briginshaw v Briginshaw at 350 is also worthy of note-

> 'In a serious matter like a charge of adultery the satisfaction of a just and prudent mind cannot be produced by slender and exiguous proofs or circumstances pointing with a wavering finger to an affirmative conclusion. The nature of the allegation requires as a matter of common sense and worldly wisdom the careful weighing of testimony, the close examination of facts proved as a basis of inference and a comfortable satisfaction that the tribunal has reached both a correct and just conclusion.'

...

[741] In the present case, the allegation is essentially negligence with respect to the issue of a news release. In the ordinary case ... conduct of the nature alleged would not necessarily attract the "conventional perception" referred to in Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd.

[742] However, the allegation of negligent conduct is the foundation for declarations of contravention and the imposition of penalties and orders for disqualification. This falls within what Dixon J referred to in Briginshaw v Briginshaw as the "gravity of the consequences". We do not think that this means only the gravity of consequences that would have been understood as possible or likely to flow at the time that the conduct occurred, rather than at the time of trial. In our opinion the "gravity of the consequences" can be assessed at the time of trial, for two reasons. First, the kinds of orders a court may make in the proceedings falls naturally within s 140(2)(a) of the Evidence Act which refers to "the nature of the cause of action" as a matter that the court is obliged to take into account. Secondly, there is authority in Australia which supports that conclusion.

[743] In R v Jenkins; Ex parte Morrison [1949] VicLawRp 51; (1949) VLR 277 the Full Court of the Supreme Court of Victoria

was concerned with a dispute as to the paternity of a child by reason of an alleged mix-up at the hospital. In the context of a statutory scheme which required the welfare of the child to be the paramount consideration, the court refused to order a change of custody. The principal judgment was given by Fullagar J, who expressly referred at 304 to the observations in Briginshaw v Briginshaw with respect, and only with respect, to "the gravity of the consequences", in the context of addressing the issue of the exercise of the discretion of the court to make the order sought. This was equivalent to the decision in the present case to impose a penalty or make a disqualification order. Fullagar J said (at 304-305) -

The situation is not properly met by saying merely that a high standard of proof is required. It is no mere matter of finding a fact on adequate evidence. It is a matter of discretion, and therefore potentially taking risks, and there is one central fact, the parentage of Nola, with regard to which no risk - not even the slightest - should be taken ... If there is even the slightest room for doubt, no order, in my opinion, ought to be made.

[744] On appeal, as Morrison v Jenkins [1949] HCA 69; (1949) 80 CLR 626, two members of the majority in the High Court expressly adopted Fullagar J's reasons. ... Webb J, although not in terms adopting Fullagar J's reasons, referred to submissions to the effect that a higher standard was appropriate and said (at 654) that "[t]he court cannot change the standard of proof, but it can and should insist on exact or cogent proofs on issues of grave importance like that of parentage."

...

[746] We note that in Re Doherty (Secretary of State for Northern Ireland Intervening) [2008] UKHL 33 ; (2008) 1 WLR 1499 the House of Lords applied to both seriousness of the allegation and seriousness of the consequences the approach that, the more serious they were, the stronger should be the evidence before it was concluded that the allegation was established on the balance of probabilities. Lord Carswell gave an example at [28]: "If it is alleged that a bank manager has committed a minor peculation that could entail very serious consequences for his career, so making it the less likely that he would risk doing such a thing".

...

[748] Just before the frequently cited passage, Dixon J said that "[w]hen the law requires the proof of any fact, the tribunal must

> feel actual persuasion of its occurrence or existence before it can be found".
>
> ...
>
> [750] References in the authorities to "actual persuasion" should be understood as equivalent to the state of "satisfaction", as that word is used in s 140. It should not be understood as requiring a subjective "belief". ... "persuasion" is not equivalent to "belief". It was deployed by Dixon J as equivalent to "satisfaction", and in the latter form has been given statutory effect.
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> ...
>
> [753] In order to be satisfied on the balance of probabilities, within the meaning of s 140, the tribunal of fact must reach an affirmative conclusion, or a definite conclusion, or an actual persuasion. This state of mind turns on the cogency of the evidence adduced before it. ... In Whitlam v Australian Securities and Investments Commission it was said that, absent diligence in calling available evidence, a court is left to rely on uncertain inferences. The case of the party in default suffers in its cogency, and it is made more difficult for the tribunal of fact to reach an affirmative conclusion, a definite conclusion or an actual persuasion: the more so if the Briginshaw principles involving the gravity of the consequences apply. In our opinion, that is the consequence of the breach of the obligation of fairness.
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> [754] This is not a novel stance. In Ho v Powell Hodgson JA, with whom Beazley JA agreed, said at [14] that "in deciding facts according to the civil standard of proof, the court is dealing with two questions: not just what are the probabilities on the limited material which the court has, but also whether that limited material is an appropriate basis on which to reach a reasonable decision", and his Honour referred at [15] to the importance of having regard to "the ability of parties, particularly parties bearing the onus of proof, to lead evidence on a particular matter, and the extent to which they have in fact done so" ..."

23 In Asim v Penrose [2010] NSWCA 366, the Court of Appeal reiterated the principles exposed by Ipp JA in Palmer v Dolman [2005] NSWCA 361, stating at [142]:

> "35 The relevant principle in regard to civil cases was expressed by the High Court in the case of Bradshaw v McEwans Pty Ltd (1951) 217 ALR 1 at 5, in a passage that has been repeated many times. The passage is:

> Of course as far as logical consistency goes many hypotheses may be put which the evidence does not exclude positively. But this is a civil and not a criminal case. We are concerned with probabilities, not with possibilities. The difference between the criminal standard of proof in its application to circumstantial evidence and the civil is that in the former the facts must be such as to exclude reasonable hypotheses consistent with innocence, while the latter you need only circumstances raising a more probable inference in favour of what is alleged. In questions of this sort, where direct proof is not available, it is enough in the circumstances appearing in the evidence give rise to a reasonable and definite inference: they must do more than give rise to conflicting inferences of equal degrees of probability so that the choice between them is mere matter of conjecture ... But if circumstances are proved in which it is reasonable to find a balance of probabilities in favour of the conclusion sought then, though the conclusion may fall short of certainty, it is not to be regarded as mere conjecture or surmise ...

36 This statement in Bradshaw was adopted in Luxton v Vines [1952] HCA 19; (1952) 85 CLR 352 at 358; Holloway v McFeeters [1956] HCA 25; (1956) 94 CLR 470 at 480 to 481; Jones v Dunkel [1959] HCA 8; (1959) 101 CLR 298 at 304; and Girlock (Sales) Pty Ltd v Hurrell [1982] HCA 15; (1982) 149 CLR 155 at 161 and 168.

37 In Chamberlain vR (No 2) [1984] HCA 7; (1984) 153 CLR 521 Gibbs CJ and Mason J said at 536:

> When the evidence is circumstantial, the jury, whether in a civil or in a criminal case, are required to draw an inference from the circumstances of the case; in a civil case the circumstances must raise a more probable inference in favour of what is alleged ...

38 In Doney v R [1990] HCA 51; (1990) 171 CLR 207 Deane, Dawson, Toohey, Gaudron and McHugh JJ said at 211 that when a lesser standard of proof than beyond reasonable doubt will suffice, 'the existence of other reasonable hypotheses is simply a matter to be taken into account in determining whether the fact in issue should be inferred from the facts proved.

39 On these authorities, it is sufficient in a civil case that the circumstances raise a more probable inference in favour of what is alleged. ...

40 The standard of proof to be applied, together with a non-exhaustive list of "matters" to be taken into account, are now to be found in s 140 of the Evidence Act 1995 (NSW): ...

41 Certain principles have become well-established in determining, in a civil case, whether circumstantial evidence leads to an inference of fraud. The following are presently pertinent:

(a)The jury must consider "the weight which is to be given to the united force of all the circumstances put together" ...

(b)The onus of proof is only to be applied at the final stage of the reasoning process: "[i]t is erroneous to divide the process into stages and, at each stage, apply some particular standard of proof. To do so destroys the integrity of [a] circumstantial case" ...

(c)The inference drawn from the proved facts must be weighed against realistic possibilities as distinct from possibilities that might be regarded as fanciful.

(d)Where the competing possibilities are of equal likelihood, or the choice between them can only be resolved by conjecture, the allegation is not proved: Bradshaw.

42 Mr Harrison placed considerable reliance on the approach expressed in Briginshaw v Briginshaw [1938] HCA 34; (1938) 60 CLR 336. Although Briginshaw has been quoted so many times, it is helpful to repeat Sir Owen Dixon's statement at 361 to 362:

... [extracted above]

43 The question arises as to the authoritative weight that, today, attaches to the observation that, where a serious allegation is made, "reasonable satisfaction" should not be produced by "inexact proofs, indefinite testimony, or indirect inferences".

...

45 It is worth repeating, I think, that in Chamberlain vR (No 2) at 536 Gibbs CJ and Mason J said that in a civil case 'the circumstances must raise a more probable inference in favour of what is alleged.

...

47 The more recent authorities to which I have referred, and s 140 of the Evidence Act (1995) (NSW) make it plain that there are no hard and fast rules by which serious allegations might be proved from circumstantial evidence. The inquiry is simply, taking due account of what was said in Neat Holdings Pty Ltd v

> Karajan Holdings Pty Ltd, has the allegation been proved on a balance of probabilities." (Emphases added)"

10. There is no dispute that in a civil matter such as this it is to be determined to the Briginshaw standard, that aspect of comfortable satisfaction having regard to the gravity of the allegations made.

11. The issues that are identified in this case for the respondent, Harness Racing NSW, are that in respect of each charge, the matters against Mr Greg Tanti can be established on the admissions he has made, the lies or various versions that he has advanced and the circumstances as a whole. And, in respect of Mr Peter Tanti, his failure as a trainer to comply with the obligations cast upon him by the rules, and the Tribunal will return to that.

12. Essentially for the appellants, it is that the respondent has failed to discount the circumstantial evidence that is available in the appellants' favour and, in key parts, the failure to establish any attempt to stomach tube, and that in relation to Mr Peter Tanti, it is common ground that if the allegations against Mr Greg Tanti fail, then, so far as Mr Peter Tanti is concerned, it is a derivative case and he cannot be found in breach of the rule or, in any event, so far as he is concerned, he has not breached the obligations cast upon him by the aspects of negligence.

13. The grounds of appeal have identified numerous instances on which it is said that both appellants were denied procedural fairness. Many decisions that have been given by this Tribunal in recent years have dealt with the fact that procedural fairness failures before the stewards can be cured by the appeal processes. The grounds of appeal on behalf of Mr Peter Tanti set out in considerable and careful detail many allegations on which it is said the stewards failed to meet their duties to him and so far as each of the two licensed persons were concerned and failed to extend to them essentially procedural fairness. The Tribunal is satisfied that each of those matters has been able to be addressed, should it have been the desire of or the need to do so, in the preparation for and conduct of this case before this Tribunal, and those matters will not be further analysed.

14. In broad terms, the relevant facts are these: that each of the two appellants are licensed persons, that Mr Peter Tanti owns the property in question and was the licensed trainer of the subject horse Iwilldefy, that his father Mr Greg Tanti is a licensed person who had the care and control of the horse during the day in question in its preparation for and subsequent transport to the races on the evening on which the stewards visited the property. In a nutshell, the case is against each person that Mr Greg Tanti was about to stomach tube – that is, attempt to stomach tube as the charge sets out – Iwilldefy prior to it going to the races.

15. Those concerns arose, to summarise the facts, on this basis: on 8 September 2015, the stewards were in the area of Mr Tanti's premises. The reason has not been set out. Some two hours before Mr Paul and the other steward, Mr Clarke, arrived at Mr Tanti's premises, they had driven past Mr Tanti's premises in a stewards' car. When they did so, they observed that the stable door was open. When they came back some hours later, driving past, they observed the door to be shut. Their suspicions were aroused.

16. The subject premises comprise a business conducted, certainly by Mr Greg Tanti and it appears also, although the evidence is unclear, by Mr Peter Tanti, of a horse feed business. The horse Iwilldefy, on 8 September, was to race at or about 6:15 that evening. Mr Greg Tanti had prepared that horse to race. It was his function, as Mr Peter Tanti was at work, to take it to the races. Mr Peter Tanti was not present at the subject premises during the day nor at any time up until the time the stewards left. Being a stockfeed business, in the relevant shed there was to be found stockfeed and other items. It was Mr Greg Tanti's evidence – and in that regard he is accepted – that when he was ready to go to the races, he closed the stable or shed door. It is to be noted it was his intention to leave for the races at or about 4 p.m.

17. The stewards arrived at or about 2:20 p.m., or shortly thereafter. The interview, it appears, may have occurred at or about 2:30. Mr Paul and Mr Clarke arrived. Mr Clarke did not give evidence to the stewards, there is no statement from him; he has not given evidence to this Tribunal. Mr Paul gave evidence to the stewards and gave evidence before the Tribunal. The transcript of what took place upon his arrival is contained in the exhibits, and reference has been made to that. He recorded the conversation. A video was taken upon arrival and, relevantly to the transcript, at or about pages 1 to 4 of some 26 pages. The recording ceased at 2:42 p.m. There had been a break in the recording, referred to on page 23. The time is not given, nor the time over which the recording device was off until it was resumed.

18. Upon arrival, Mr Paul gave evidence of observing Mr Greg Tanti using a twitch to stir a substance in a bucket which could hold about 10 litres, and on approaching he observed it to contain a green liquid which he described as having an unpleasant smell and that Mr Tanti was engaged in the process of stirring with what is common ground in these proceedings a twitch. In addition to observing a closed door and those actions, he observed a horse, subsequently identified as the horse to race, Iwilldefy, tethered to a forklift immediately nearby. No other horse was observed in the immediate area. In addition, Mr Paul identified a Mr Webber and a Mr Bigeni .

19. The transcript, not unsurprisingly, sets out the exchange that took place. It is the case for the respondent that Mr Greg Tanti gave various versions,

eventually a truthful version, and that a combination of those facts contained in them an admission he was about to drench the horse. Subsequently, at the stewards' inquiry, he gave other versions which would be exculpatory if accepted. Mr Greg Tanti's evidence, and the acceptance of it, the weight to be given to it and the impact upon the circumstantial case is such that the various versions have to be analysed.

20. There are two reasons: one is to the provision of an innocent explanation, or a guilty explanation and, secondly, as to the weight to be given in making that determination as to whether he has lied and by those lies engaged in consciousness of guilt. Consciousness of guilt, if established, is a key reason in a circumstantial case as to whether a version should be accepted or not. His first version was that it was a formula mix and he puts it in the water, when the horses race, in all of them, "just a drop of this in all the water". He was then questioned: "So the intention is not to stomach tube the horse?" "Yeah, it's only vitamins."

21. He was asked later how he mixed the particular product. It is to be noted at this point that Mr Paul was standing next to Mr Tanti, who was seated, and was able to observe a green mixture in the bucket. So the first explanation: vitamins in water to be given to all the horses. "What sort of vitamins?" "Berocca powder and tablets", which may or may not have contained a bit of salt. He then produced a product called Great Life Benifex Performance Vitamins B and C, something which Mr Greg Tanti said he himself consumed. He indicated quite clearly that he had nothing to hide. When asked to produce the packet for the Berocca, etc, he indicated he had burnt all the packets. He described how he had bought them from a grocer. He then said he used bicarb in there as well.

22. At this stage, it is apparent that if either of those were true, then he would be in breach of the subject rule because each contains – that is, Berocca and bicarb – alkalising agents, and their administration prior to racing and within 48 hours is prohibited.

23. It is quite clear that, commencing at page 9, Mr Paul had started to form suspicions about what Mr Greg Tanti had to say, as a result of which he cautioned him as follows (transcript 9):

> "It's probably in your best interests to tell us exactly".

And later:

> "So don't mislead us. You've got one opportunity here, Greg, one opportunity",

to which he responded:

"It's like green stuff you buy. Actually, we buy it in a packet and mix it up and we give it to them in their water." And later (page 10):

"MR PAUL: Well, I'll put it to you that that there is – that is a drench.

MR GREG TANTI: Yeah.

MR PAUL: And that is intended for this particular horse over here. Now, you don't have to agree with that -----

MR GREG TANTI: Yeah, yeah.

MR PAUL: ----- proposition, but I'm telling you now that that appears from my experience as an investigator and with someone who has been around horses for a long time, we walked in here, the front door of the shed is closed. Now, we drove past here an hour ago -----

MR GREG TANTI: Yeah.

MR PAUL: ----- and it was open.

MR GREG TANTI: Yeah.

MR PAUL: It's now closed, we've had to come around the side, you are sitting here with Mr Webber mixing a particular product that is probably a quarter of a bucket. There's a horse located just across from us here, the only horse in this particular shed.

MR GREG TANTI: Yeah, yeah, yeah, yeah.

MR PAUL: It's yoked up, it's the horse that's engaged today. Now, I'm putting to you that that there, that mix, is intended for this particular horse. What do you say to that proposition?

MR GREG TANTI: Yeah, well, look -----

MR PAUL: Is that right or wrong?

MR GREG TANTI: Yeah. Look, it's a green drench I buy and use. There's nothing in it. It's just safe.

MR PAUL: Was it going into this horse?

MR GREG TANTI: Yeah.

MR PAUL: It was? Iwilldefy?

MR GREG TANTI: Yeah.

MR PAUL: Okay. And did Mr Peter Tanti tell you to do that?

MR GREG TANTI: No. He doesn't know."

Later (transcript page 11):

"MR PAUL: This is the first time you've done it?

MR GREG TANTI: It's just the horse looked a bit dehydrated and that.

MR PAUL: And you thought you'd give him a -----

MR GREG TANTI: Yeah.

MR PAUL: Are you aware of the rules that you are not to stomach tube a horse -----

MR GREG TANTI: Yeah.

MR PAUL: ----- within 48 hours of a horse racing?

MR GREG TANTI: Yeah.

MR PAUL: So why would you do it?

MR GREG TANTI: Oh, well, just – like I said, he looked a bit dehydrated, he didn't drink much last night."

There was substantial other evidence. Then transcript 13:

"MR GREG TANTI: You can use it in the water and give it to the horses.

MR PAUL: Not very wise, is it?

MR GREG TANTI: No, well, it's – no. You've got to help the horses when they are a bit dehydrated and that. You've got to -----

MR PAUL: Well, if everyone had that idea, then, you know, everyone would be drenching, you know, four hours out from a race, wouldn't they?

MR GREG TANTI: It doesn't make them go faster, it just makes them feel good."

Importantly, page 15:

> "MR GREG TANTI: I've got nothing to put, I don't use any drugs on the horses, they get swabbed every time they race – pre-swab and after the race."

And, Mr Greg Tanti, page 22:

> " I can't see what the drama is. He's been racing, he's been swabbed a hundred times pre-(inaudible) and after the (inaudible). There's never any dramas."

Page 23, Mr Greg Tanti:

> "MR GREG TANTI: Why is it getting so hard to keep a horse fit to go to the races?"

Page 24, Mr Paul:

> "But if the horse isn't well enough to go to the races, then it should stay home. I mean, that's pretty much the simple.
>
> MR GREG TANTI: You've got to keep them. I mean, they work hard and you've got to keep them in condition and that. You can't just work them and work them and feed them and put them away. It's like you, you need vitamins to keep going. I do. I drink Berocca and I drink bicarb every morning."

And, page 25:

> "MR GREG TANTI: I didn't buy it off Mr (inaudible), I buy it off the supply truck and I buy it off the lady down the road."

24. That was his interview. During the course of that and immediately thereafter, Mr Peter Tanti had been spoken to. When initially spoken to, the line unfortunately dropped out and in essence no factual matters were first identified during the interview of 8 September with Mr Peter Tanti in that brief conversation.

25. Subsequently, the conversation, as has been said in the separate recording, with Mr Peter Tanti took place. In that, he conceded that he knew his father was preparing the horse for racing that day and had given permission to do it in his absence. And he was asked:

> "What do you know of this green mixture that we came across this afternoon?

MR PETER TANTI: Oh, I couldn't tell you much about that but – green mixture – but I know – I know it's stuff I've been giving my horses, not on race day, but on other days. It's like a vitamin drench and that."

And later:

"I said I put a vitamin mix in their waters and stuff." And later: "During the week."

And later:

"I buy it from a lady on – what street is it – on South Street."

It was put to him that his father had made an admission, to which he said, "Right." It was put to him about the horse being dehydrated and about the horse being tied up where it was when there was a tie-up rail outside the shed. He was asked if he had any knowledge of that and he said, "No." This was then put to him:

"MR PAUL: All right. So you are comfortable with the evidence that you don't know anything of this?

MR PETER TANTI: Well, that's right.

MR PAUL: Have you ever prepared, or been party to a mix being prepared for a horse prior to a race?

MR PETER TANTI: No.

MR PAUL: All right. Have you ever stomach tubed a horse, or have you ever witnessed your father stomach tube a horse?

MR PETER TANTI: No, definitely not, and I wouldn't even know how to do it.

MR PAUL: All right. Have you ever seen your father do it?

MR PETER TANTI: No.

MR PAUL: All right. Do you think he would know how to do it?

MR PETER TANTI: I don't think so, no."

Question, later:

"That's a surprise to you that we've come across this particular incident or matter today?"

Answer:

"No."

And later (interview page 6):

"He was probably giving it to the other horse or something". And he had essentially nothing else to say.

He was asked (transcript 7):

"You would think that there would be some level of communication between the both of you?

MR PETER TANTI: Yeah well, there is, yeah."

And later:

"Well, I was unaware of any mixture being made up for the horse. But, um, yeah."

26. Each of them appeared before the stewards and, as has been said, Mr Greg Tanti's versions changed. It is said that absent what was told to the stewards at their inquiry that the evidence on pages 10, 11 and following, which has just been read out, is, so far as Mr Greg Tanti is concerned, a complete and direct admission by him of the elements of Charge 1 against him and that in fact he was interrupted in the carrying out of his intention to administer a drench or stomach tube to the horse on race day.

27. What then of the interview that Mr Paul had conducted and what of his other actions on that day? It is to be noted that at no time did Mr Paul ask Mr Greg Tanti the direct question whether he intended to administer that substance by way of a drench to the subject horse prior to going to the races. It is to be noted, in addition, that Mr Paul and possibly Mr Clarke – although Mr Clarke's involvement is unknown – carried out a search at the premises. Mr Paul told the stewards he did not search the whole shed. He was questioned about that. The reasons for his actions in not carrying out a more thorough search are to be found in his belief that the words uttered by Mr Greg Tanti comprised an admission of the intention to drench prior to the horse going to the race.

28. He was questioned in the Tribunal at some length about his search. He said in cross-examination:

"It was not thorough. I looked around. I did not turn the shed upside down."

29. He described the shed as being a storage and feed-type shed. He could not see anything apparent on the search he undertook and what he expected to see was further tubing apparatus or equipment concerned with the preparation of stomach tubing hanging about. He did not do so. He conceded that if he had found that equipment, it would bolster his case. But he felt that a combination of the existence of the bucket, the green solution in it, the horse being tethered nearby, the use of a twitch and a closed door, and the admissions, were sufficient.

30. He conceded that Mr Greg Tanti invited him to carry out a swab of the subject horse but he was not qualified to do so and, having regard to the time, did not know whether he would be able to find an accredited official to do so. He also said that he thought he caught Mr Greg Tanti by surprise when he turned up. That evidence was adduced in respect of the issue that at the very end of the stewards' inquiry, for the first time Mr Greg Tanti volunteered that he had seen the stewards' car driving past one or two hours earlier. It is to be noted that in respect of the interview at no time did Mr Greg Tanti actually say that it was his intention to administer the substance after the horse had returned to the stables from the races.

31. Mr Greg Tanti advanced further reasons at the stewards' inquiry as to what he was doing, he having already given two explanations, namely, adding it to the water and to rehydrate. It is suggested that his first explanation, the addition to the water, can be disregarded because his subsequent admission, to which reference has been made on pages 10, 11 and following, supplanted it. And the additional evidence of Dr Colantonio that the particular product, which comes in a 300 gram sachet, is designed to be provided to one horse and that if Mr Greg Tanti had been correct that he was going to give it to all the horses in their water afterwards, as he said – that is, to the entire stable – it would do next to nothing. And, interestingly, Mr Greg Tanti did not give evidence about the remaining horses in the stable, what was intended to do with them or, indeed, why he would wait until he got home from the races with one horse, Iwilldefy, to then seek to give horses which had not been under any exercise, on the evidence, the particular product.

32. Is it a legitimate mixture post-race, which is one of the scenarios Mr Greg Tanti raised with the stewards? That is, would it help Iwilldefy to eat better because that horse embarrassed him, it looked apparently so out of condition when it was taken to the races. Or was it intended to give it to all of the horses in the stable by adding it to their feed in wet form?

33. As to a single dose, that is, the two or three litres in the bucket to be given to Iwilldefy, the evidence of Dr Colantonio is that if the feed was wet by that amount of water, that it would turn it into soup, to quote him precisely. It is, therefore, that the Tribunal could not accept that it was the

intention to give the two or three litres of green substance to Iwilldefy. At the same time suggesting it was for that horse, suggestions were raised that it was for the other horses, a total of six.

34. The Tribunal has just made some reference about that evidence, but importantly, and relevant to Dr Colantonio's evidence, that such a distribution of one sachet would do next to nothing of a beneficial nature to a horse that had exercised or, in the case of the other five, had or had not exercised. That is, that the 300 grams are designed to be given to a horse by dissolving in two or three litres of warm water or, alternatively, by a 50 gram addition to feed twice a day over three days. That is, if it is to be done by 50 gram dose, those 50 gram doses are to be given to one horse. 50 grams for six horses each would do no good at all. Bearing in mind there was no evidence about prior administration to Iwilldefy of 50 grams in its feed or, indeed, to any of the other horses. And bearing further in mind that this was the last sachet.

35. Setting aside the fact that the sachet had been burnt, and just dwelling on that for a moment, the burning is rather odd. There is nothing on the instructions that says to burn the sachet for safety purposes by way of disposal. Mr Greg Tanti says there was. He was wrong. He said he burnt it because he didn't want his grandchildren having access to it because of what was set out on the label. The difficulty for him is there is not a skerrick of evidence about grandchildren being present or likely to be present. And there was a further fact that he was found in the action of stirring the product in the bucket at the time Mr Paul arrived. When does Mr Greg Tanti seriously suggest that he went out to some place and found a convenient location – whatever that was – to burn that sachet? He has adduced no evidence – and there is none before this Tribunal – as to where this burning took place or when. It must have been approximate to the putting of it in the bucket from the sachet, because the water was still warm and he was in the process of stirring it.

36. That explanation, when isolated from all other explanations, does not ring well for the credibility of Mr Greg Tanti. Therefore, the suggestion that it would be the use of a non-prohibited substance, quite lawfully administered post-race to this horse, is just not an acceptable proposition. It would be soup. To administer it to the six horses, which is an alternative suggestion, would be useless. There is no evidence of, for the reasons expressed, about exercise and a need. There was no more.

37. As to what happened to the rest of it would otherwise be unknown. But, in any event, if he was mixing it in the bucket in two or three litres of warm water, then if he had followed the instructions, which he says he does, he would have put the whole sachet in there, anyway. So it would be a wet feed approach and not a dry feed approach. Therefore, his suggestion that it

was to be a legitimate post-race provision to the horses is just not available on the evidence.

38. There was also the rather difficult-to-follow reason as to why, if he was to race the horse at 6:15 and return to the stables thereafter and feed the horses, he would have been making the mixture up at 2 o'clock when it was still warm and then want to come back and administer it so many hours later. He simply does not explain that because he never told the stewards he was going to do it later and did not choose to tell Mr Paul in the interview that that is what he was going to do. It has all the colour of a post-interview re-creation to serve his own purposes.

39. As to the rehydration theory, which was earlier referred to, Dr Colantonio's evidence is that it is not suitable for that purpose, it does not contain electrolytes. If you are simply going to add it to the feed, then it would cause further dehydration. To rehydrate a horse, you need fluids and electrolytes. And, in any event, spreading it between the six horses for rehydration purposes would do next to nothing.

40. It is interesting to note that Mr Peter Tanti made no mention of the explanation subsequently advanced by Mr Greg Tanti at the inquiry when he was spoken to, that is, that the horse was a notoriously poor eater, that that would therefore necessitate the addition of this mixture to its feed.

41. To distil from all of that, therefore, it is the submission on behalf of the respondent that Mr Greg Tanti has been disingenuous in his answers – they are lies. There is no doubt that he has advanced a number of versions. There is no doubt that he has accepted, by his direct words, it was a drench. It is submitted subsequently that a drench can have another meaning to it, but there is no doubt, in the Tribunal's opinion, the expression of drench used by Mr Greg Tanti is the industry expression that is a drench by tubing.

42. It is also to be noted that in respect of the other explanation about Berocca and tablets and Great Life Benifex Performance Vitamins B and C, etc, that that was just, as Mr Greg Tanti conceded to the Chairman of the inquiry, "just rubbish".

43. Much weight was placed upon the fact that Mr Greg Tanti admitted that what he was going to do and the conduct he was engaged in fell within the terms of the charge proffered against him. It is said that once he came clean with Mr Paul in his interview, after he was told and warned about the necessity to tell the truth, that he did, he then told a version from which he did not depart and which he reinforced in his subsequent evidence, as quoted on pages 23 about keeping the horses fit and healthy and page 24 about keeping them conditioned were entirely consistent with his coming clean, as it were, and making the admissions against interest which he did. They are very persuasive arguments.

44. It is said that there is a fatal flaw in the respondent's case because the essential items for the administration of a tubing event were not found. There is no doubt that there is no evidence of the presence of all of the items necessary to effect a tubing of a horse. The evidence of Dr Colantonio reinforces what is common knowledge in the industry, that you need a funnel, a tube, a bucket, a twitch and a lubricant to safely insert a nasogastric tube into a horse's stomach and to then, having so inserted the tube, administer the drench. There is an alternative of the use of a pump instead of a funnel.

45. The evidence here establishes that Mr Paul found a bucket, the contents of the bucket being the drench, a twitch, with which at that time the liquid was being stirred, and the subject horse tethered immediately nearby with no other horses present. There was no funnel, there was no tube, there was no lubricant.

46. It is an agreed legal position in these proceedings on an allegation of a breach of attempt that not every ingredient of a tubing event has to be established to prove an attempt to do it. If there are sufficient indicia to support an adverse finding of part of the conduct, then that in appropriate circumstances can be enough to establish an attempt. That is, not every element of the offence of tubing itself has to be proved.

47. What then of the failure to find the other items? As has been set out, Mr Paul was armed with what he believed to be an incontrovertible admission sufficient to deal with an attempt to drench. He was armed with the observations he had made – the bucket, its contents, the twitch and the horse tethered immediately approximate on its own. The Tribunal accepts that he was invited to conduct a swab and invited to conduct a search.

48. The Tribunal only has the evidence of Mr Paul as to what happened in that search. Mr Greg Tanti gave no evidence of it. He did not give evidence to the stewards or this appeal. It is the unchallenged evidence of Mr Paul. He has not varied in what he said took place. He told the inquiry he did not search the whole shed. He has told this appeal that he did not search the whole shed, he did not turn it upside down, and the reasons he did not do so have just been set out.

49. Does that mean that Harness Racing, in a circumstantial evidence case, can satisfy the Tribunal to the Briginshaw standard that the absence of those three critical items – the funnel, the tube and the lubricant – is not fatal to its case? And to emphasise, the onus is on Harness Racing in respect of those matters, not upon the appellants, and again it is to the Briginshaw standard.

50. It was put in submissions on behalf of the respondent, it having been conceded, that to tube a horse by one person can be a very difficult exercise. It can be done, but is not usually. The Tribunal is aware that what usually happens is that some assistant, with the use of the twitch affixed to the horse's nose, will keep its head steady. There is no doubt it is an unpleasant experience for a horse to be intubated and that it is necessary to keep its head steady for its safety and to ensure the correct insertion of the tube, and that is usually done by the person not holding the horse.

51. It was frankly suggested, the Tribunal can say, that Mr Webber was physically able to do it. Just dealing with Mr Webber for a moment, there is no evidence to contradict what he said to Mr Paul, that he was there as a customer of the feed business, he was there to effect his purchase, he arrived only about five minutes before Mr Paul and he saw nothing untoward and he was not participating in anything.

52. Mr Bigeni, who is the caretaker of the premises and apparently does not enjoy good health, was lying on a bale and saw nothing. Old television programs come to mind, and Mr Bigeni may well have watched them, because all he could say to the stewards was, regardless of his presence in the room, “I saw nothing”. He was no assistance at all. His capacity to assist in the drenching is simply not known. It could not be said that to the extent that there was any reliance to be placed on his evidence – and neither party did – that he could be a witness of credibility.

53. There is one other aspect which Harness Racing rely upon to support the conclusion, and that is the fact the door was closed. The issue for the door is that it was closed at or about 2:20, but Mr Greg Tanti was not to leave till about 4. The evidence remains unanswered as to why he would shut a business door when he is attempting to conduct a business at least an hour and a half before he was due to leave. It is hardly a good business practice, but there was no evidence about his business practices because he did not give it. It is the case of Harness Racing, consistent with the suspicion aroused in Mr Paul, that the door was shut to disguise the conduct that was taking place within that area.

54. So the combination is bucket, drench, twitch, warm water in bucket and door closed. And admission. To the extent that Harness Racing, the respondent, is required to do so, it needs to eliminate from the Tribunal's consideration evidence in favour of Mr Greg Tanti. It relies upon the numerous different explanations he gave, including his view about Mr Paul and effectively being constrained by him such that his mind was overborne and his will to say things he might otherwise have done was lost.

55. The Tribunal's opinion of Mr Greg Tanti is regrettably less than favourable. The numerous occasions on which he has chosen to change his version, the straight-out lies in which he has engaged, in this Tribunal's

opinion, could well be sufficient to indicate consciousness of guilt, but it is not necessary to go that far. In view of that unfavourable opinion of his credit, can his admission nevertheless remain intact? Because if all the other evidence is rejected, why shouldn't his admission be rejected? The answer to that is the standard one, that he was appropriately cautioned, he was aware of the need to tell the truth and on that one occasion the Tribunal is satisfied that armed with that knowledge and the desire to do so, he told the truth. That truth contained the appropriate admission.

56. That admission is sufficient to overcome the deficiencies in Harness Racing's totality of evidence to do with the absence of the funnel and tube. That then is sufficient to raise an inference in favour of what is alleged. That is, a reasonable and definite inference, and that it is reasonable to find in favour of the conclusions sought, even though it is not driven by certainty.

57. But what of the other evidence in a circumstantial evidence case that must be considered on the balancing exercise? Because it is a balance of probabilities test. What then falls in favour of Mr Greg Tanti's case?

58. Transcript page 57 he raised his knowledge that the stewards were in the area. That is to be noted, that it arose at the very end of all of the opportunities upon which he had to express that knowledge. It is, as the old saying goes, at the heel of the hunt. He did not tell Mr Paul that. He did not raise it on the first day of the stewards' inquiry. He did not raise it early on the resumption. It was raised to quite clearly indicate that he would not possibly have engaged in the untoward conduct to which he made admissions because he knew he was going to be caught because he knew the stewards were there. The Tribunal does not accept that evidence on a credibility basis. It prefers the fact that he looked surprised, as Mr Paul described it, when Mr Paul and Mr Clarke arrived.

59. There is the further evidence that if he was to do it pre-race, he would have followed the packet instructions which are to do it 12 hours before. Having regard to the disingenuous way in which he has chosen to advance his evidence, the Tribunal is not satisfied that he was blindly following, or correctly following, to be more fair, the packet instructions.

60. There is the strong argument that each of the items of equipment found by the stewards have an innocent explanation – the door being closed, because it was a feed business and he was going to the races. The Tribunal has dealt with that and finds no comfort in his evidence that in doing that on or before 2:20 with an intention to leave at 4, that was the reason why he did it.

61. There is the twitch. The twitch itself has many uses. They were described in the evidence. That the prime uses of the twitch, relevant to these proceedings, were the use of it as a stirrer, and the use of it to restrain

the horse by affixing it to the nose. Those other explanations are available but the evidence does not elevate them to a stage that they would eliminate consideration of the presence of the twitch.

62. The substance itself and the various explanations he has given have been rejected.

63. The bucket – yes, certainly. There is no doubt that a bucket could be there for entirely innocent purposes, and there are many.

64. The horse being tethered simply there where it was, because the preparation of it for race purposes – blackening its hooves, combing its coat and so on – had just been completed and it was ready to be taken away. Balanced against the fact that it was the only horse in the area, there was nothing else about its presence or absence which would indicate that it was there for that other purpose or, indeed, might have been there for the other purpose. That does remain an alive issue.

65. The fact the water in the bucket was warm could be consistent with it just being warmed because that is the way you mix it. That does remain alive.

66. Therefore, there are some small matters left intact in respect of the failure to find the tube and the funnel and coupled with the innocent explanation in respect of some of the items in any event.

67. There is the fact that Mr Paul conceded that Mr Greg Tanti invited him to conduct a swab.

68. There is the very powerful fact that the substance itself is not a prohibited substance. There is the fact that has been canvassed substantially in evidence that this particular substance can be given in various ways – by tube, which is the respondent's case – as a feed additive, or in water. The Tribunal has dealt with each of those possible innocent explanations and alternative routes.

69. There is the powerful fact that Mr Greg Tanti volunteered to Mr Paul, and has repeated the fact, that he was aware these horses would be swabbed pre- and post- race. That is correct and is a strong reason for him not to administer a prohibited substance. But the simple fact of the matter is that this is not a prohibited substance. There is no evidence that this particular green amino would be detected by any pre- or post- race sample. Therefore, that evidence carries no weight.

70. There is the submission that Mr Greg Tanti used the word drench in an ambiguous way. Having reviewed the whole of his evidence and each of the occasions on which he has chosen to speak and used that term, it is the fact that the Tribunal finds that he was using in the sense that was unfavourable

to him and not that he was simply talking about it, in other words by means of providing some legitimate insertion of fluid into a horse rather than an intubation.

71. As to the issue then whether there could be an entirely innocent explanation for all of their conduct, that is, that it was not for a pre-race administration but was to be administered after the horse was returned from the race, to it and other horses, and it was just that he was being prepared in having everything ready to be dealt with when he got back from the races is of course the gravamen of the case, and that is simply to be balanced against the totality of the evidence.

72. To the Tribunal's understanding, no other issues have been identified for Mr Greg Tanti which might be considered on the probable inferences in his favour which have not been discounted by the respondent and which therefore, in that necessary balancing between conflicting inferences, would prevent the Tribunal from coming to the reasonable and definite inference required to establish a circumstantial case.

73. The Tribunal finds that the conclusion it reaches does fall short of certainty but is not satisfied that the case for the respondent is mere conjecture or surmise.

74. The respondent satisfies the Tribunal that in respect of the actions of Mr Greg Tanti that it has raised a more probable inference in favour of the case it alleges, that is, that based upon the admissions, the conduct and all of the evidence to which the Tribunal has made reference, that at the relevant time Mr Greg Tanti had engaged in the preparation for the administration by intubation of a stomach tube to the subject horse Iwilldefy.

75. Harness Racing therefore satisfy, in respect of Charge 1, the particulars alleged and accordingly that each of the ingredients contained in the subject rule have been found to the satisfaction of the Tribunal on the Briginshaw standard.

75. In relation to Mr Peter Tanti, it is an agreed fact that the case against him only needs to be considered if the case against Mr Greg Tanti is found. That having been done, it is necessary to consider whether against Mr Peter Tanti the requisite ingredients have been established.

76. In that regard, the respondent strongly relies upon a combination of the subject rule, to which the charge relates, Local Rule 90A and Rule 309.

77. Local Rule 90A :

> “NSWLR90 A (1) A trainer is at all times responsible for the administration and conduct of

his stables.
(2) A trainer is at all times responsible for the care, control and supervision of the horses in his stables.
(3) If a trainer is to be absent from his or her stables, for a period longer than 48 hours, he or she must, with the Stewards permission and approval, deputise a licensed or registered person to be in charge of such stables during his or her absence.
(4) Should a trainer be unable to attend a race meeting where any horse trained by him is engaged he shall nominate his licensed stable representative or another licensed trainer to be responsible for such horse at the meeting. No later than one (1) hour before the advertised starting time of any relevant race he shall advise the Stewards in writing of the person nominated who must consent in writing to be so nominated. Such nomination may not be further delegated.
(5) Such deputation referred to in (2) and (3) does not relieve the trainer in any way from his or her responsibilities for the care, control and supervision of his or her horses and the conduct of his or her stables.
(6) The person to whom responsibility is delegated does not have the authority to further delegate this responsibility.

78. AHR 309;

> "309. In the interpretation of a rule a construction that would promote the purpose or object underlying it, whether expressly stated or not or which would facilitate or extend its application, is to be preferred to a construction that would not promote that purpose or object or which would impede or restrict its application."

79. Dealing with those in reverse order, a purposive interpretation of the rules is required under Rule 309, consistent with what is required by section 33 of the Interpretation Act.

80. Local Rule 90A is a very powerful rule. It places a trainer in a very different position to many other people in the community. It is of such power that it might be described – although it does not use these terms – as imposing upon a licensed trainer a vicarious liability. It imposes a responsibility at all times for the administration and conduct of stables and for the care, control and supervision of horses.

81. The fact is that Mr Peter Tanti is a licensed trainer subject to that Local Rule. He was absent from his stables at a legitimate work commitment. He was entitled to and did use a licensed person, Mr Greg Tanti, to have the carriage of his stables in his absence and he was also authorised to prepare the horse to go to the races and to take it to the races. That does not form

any part of the case against him. The rule that he is said to have breached, 239A, is relied upon so far as the principle of negligence is concerned.

82. On behalf of Mr Peter Tanti, it is suggested that that negligence has never been particularised, neither by the stewards nor prior to this hearing. There is no evidence before the Tribunal that such particularisation was sought. To the extent there is a discrete procedural fairness issue, it falls away.

83. The gravamen of the evidence is that there is evidence to establish that his compliance with the rule was not adequate so far as supervising and training and communication with Mr Greg Tanti is concerned. It is said to be particularly exacerbated on aspects of negligence by reason of the fact that Mr Greg Tanti had, only some months prior, returned from a two-year period of disqualification for a TCO2 breach of the prohibited substance rules. There is a relationship of father and son. There is not evidence before the Tribunal as to the steps taken, other than that contained in the record of interview and what was said to the stewards, about how Mr Peter Tanti provided the appropriate supervision, communication, guidance and the like to Mr Greg Tanti.

84. Mr Peter Tanti was aware of the use of the particular powder and its purchase. He was aware that it was used pre-race and outside the constraint rules. He was aware that his father used it and he was aware it was put "in their waters and stuff", to quote him. He was asked about stomach tubing. He had never seen his father do it. He wouldn't know how to do it and he didn't think his father would know how to do it. It has to be said that comment to Mr Paul, having regard to the fact that his father had a previous TCO2, implies that there has been no discussion between them about such issues, because if there had been, he made no reference to it to the stewards.

85. He was not surprised that they had come across this particular incident because the substance was given to the horses and done so, it appears, quite regularly. It being borne in mind, importantly, that it was not a prohibited substance and its use otherwise in respect of the 48 hour prior to race rule was otherwise entirely unremarkable. He said there was some level of communication between them. There is no evidence from him as to specific instructions given to Mr Greg Tanti in respect of his duties in the 48 hours leading up to the race.

86. There is no evidence from him of any instruction given to Mr Greg Tanti in the use of the subject substance at any time. There is no evidence of any instruction being given not to use it within 48 hours, bearing in mind that he was not surprised by the fact that it was used. There is no evidence of any steps taken, therefore, other than reliance upon a father who is a licensed person, to comply with the rules. It is submitted, therefore, there is a

disconnect between him as a licensed trainer and the duties that he has as against the steps taken by his father.

87. There is, of course, an absence of any inference from Harness Racing that might deal with findings of matters which might be prejudicial to him. There was, for example, no search that might have indicated that the use of this substance was otherwise not permissible. And that is only raised in the context of the negligence against an absent trainer issue.

88. The Tribunal is asked to and reminds itself of the Briginshaw standard in respect of these matters and the gravity with which this allegation must be assessed.

89. It is asked to and reminds itself of the necessity to consider that it is essentially a circumstantial case in the absence of direct evidence and the balancing exercise that must take place in assessing whether or not this trainer with the equivalent, in the Tribunal's words on the submissions, of vicarious liability has done enough in the operation of his stables to prevent this conduct of his father occurring. The onus is on Harness Racing, not upon Mr Peter Tanti to the contrary.

90. The concern for the Tribunal is that the totality of the facts, the past history of Mr Greg Tanti, the way in which his stable was operated and despite the factors in his favour, that Harness Racing satisfy the Tribunal to the Briginshaw standard that the failure to meet the standards required of him under Local Rule 90A, for the reasons expressed, are such that he was negligent in respect of his conduct of his stables as particularised and as alleged in Rule 239A.

91. In those circumstances, that allegation against him is made out.

92. The formal order, therefore, is in respect of each of the appeals in relation to Charge 1, they are dismissed.

93. The Tribunal notes that in respect of each appellant, Charge 2 for each of them is not before it.

94. It is apparently an agreed fact that the future conduct of the matter will be that it will be adjourned for the purposes of submissions on penalty.

SUBMISSIONS MADE IN RELATION TO THE CONDUCT OF SUBMISSIONS ON PENALTY

In respect of the issue of penalty, the Tribunal stands the matter over. It orders the respondent to file and serve its written submissions on penalty within five working days of the receipt of this finalised decision. Each appellant is then to indicate by immediate reply to the Tribunal whether it

wishes an oral hearing on penalty or proposes to make written submissions. If it is written submissions, the Tribunal allows 14 days, or such other time as may be sought, and a further 7 days thereafter for the respondent to reply.
