



September 10, 2021

VIA CERTIFIED MAIL & EMAIL

Marcus J. Vitali
[REDACTED]
[REDACTED]
[REDACTED]

Re: Notice of Hearing

Dear Mr. Vitali:

This letter is to advise you that the New York Racing Association, Inc, will conduct a hearing to investigate the charges against you set forth in the attached Statement of Charges. You are hereby directed to appear via video conference on September 30, 2021 at 10:00 AM for a preliminary hearing conference before the Hearing Officer, Hon. Robert S. Smith, to answer these charges.

You must serve a written answer to the Statement of Charges within five (5) business days after service of this notice. The failure to timely serve an answer shall be deemed an admission to the charges set forth in the attached Statement of Charges. Please be further advised that if you do not appear at the hearing and have not been granted an adjournment, then a decision on the charges, including by default, may be made by the Hearing Officer.

Please note that at the hearing, you will have the right to be represented by yourself, a licensed attorney, or a duly authorized representative. Additionally, you will have the right to testify, produce witnesses, present documentary evidence, and examine opposing witnesses and evidence. The Hearing Officer shall have the authority to limit the introduction of irrelevant evidence. Please be advised that the hearing will be conducted pursuant to the attached Hearing Rules and Procedures.

Sincerely,

Melanie Sims Frank
Deputy General Counsel

Encls.

cc: Henry M. Greenberg, Esq. (via email)
Hon. Robert S. Smith (via email)



THE NEW YORK RACING ASSOCIATION, INC.

**IN THE MATTER
OF
MARCUS J. VITALI**

STATEMENT OF CHARGES

FACTUAL ALLEGATIONS

1. Respondent Marcus J. Vitali (“Respondent”) is a trainer of Thoroughbred horses.
2. From between in or about 2010 and in or about 2020, Respondent amassed an extensive record of medication violations, lengthy suspensions, improperly using “program” or “paper” trainers during suspensions and obstructing an investigation into alleged wrongdoing.
3. In the past five years, Respondent was denied entry, ejected and/or had license applications denied by regulators of Thoroughbred racing in Florida, Pennsylvania, West Virginia, New York and Delaware; and was sanctioned by the Jockey Club for violating a racing statute, rule or regulation relating to prohibited or restricted drugs, medications or substances seven times in a single year.

Florida

4. Between in or about 2011 and in or about 2016, the Florida Division of Pari-Mutuel Wagering determined that Respondent violated a racing statute, rule or regulation relating to prohibited or restricted drugs, medications or substances on 23 occasions.



5. On or about July 1, 2016, Respondent agreed to a settlement with the Florida Division of Pari-Mutuel Wagering that resulted in a 120-day license suspension and \$7,000 fine.

6. On or about September 20, 2016, The Stronach Group — which owns Gulfstream Park in Florida, Laurel Park and Pimlico in Maryland and Santa Anita Park and Golden Gate Fields in California — banned Respondent from its racetracks, because, while under suspension in Florida, Respondent allegedly used visitor's passes to gain access to restricted areas of Gulfstream Park during training hours and caused horses trained by to be run in races under the name of another trainer.

7. In or around November 2016, Respondent was scratched from the opening-day program at Tampa Bay Downs, after its Vice President of Racing discovered that Respondent, while under suspension in Florida, caused horses trained by him to be run in races under the name of another trainer, despite having claimed to stop such practice.

West Virginia

8. On or about March 1, 2017, the West Virginia Racing Commission denied Respondent's license application, finding:

A Comprehensive Ruling Report from the Association of Racing Commissioners International (RCI) demonstrates that Mr. Vitali has had a total of fifty-five (55) rulings issued against him in other racing jurisdictions . . . Mr. Vitali's past record of violations in other jurisdictions shows a consistent and callous disregard for the rules of racing. During his permit tenure it appears that Mr. Vitali . . . has continuously engaged in conduct unbecoming and detrimental to the best interests of racing . . .



Pennsylvania

9. On or about March 2, 2017, Penn National Race Course (“Penn National”) issued Respondent a “Notice of Ejection and/or Denial of Admission.”

10. On or about March 3, 2017, Respondent appealed Penn National’s ruling to the Pennsylvania Horse Racing Commission (“PHRC”), seeking a stay of his ejection and a hearing.

11. On or about March 16, 2017, PHRC (A) denied Respondent’s request for a stay, finding, among other things, that “issuance of a [stay] in this matter, given the overwhelming number [of] medication drug positives, would substantially and negatively affect other interested parties, including the Commission, the integrity of racing and the general public”; and (B) granted Respondent’s request for a hearing.

12. Following a hearing, on or about May 25, 2017, PHRC affirmed Penn National’s decision to eject Respondent, ruling that such “ejection shall continue for a term of one thousand ninety-five days commencing retrospectively to March 2, 2017.”

New York

13. On or about February 13, 2019, the New York State Gaming Commission denied Respondent’s license application for “[failing] to comply with licensing requirements.”

Delaware

14. In or around 2019, the Delaware Thoroughbred Racing Commission (“DTRC”) upheld a suspension and fine issued by the Delaware Park Stewards against Respondent.



15. On or about July 22, 2019, Delaware Park Stewards suspended Respondent for one year and fined him \$2,500 for “interfering with and impeding an investigation being performed by the DTRC investigator and Delaware Park Security Staff.”

16. Specifically, a hot walker testified that Respondent asked her to store “unmarked vials of a clear liquid in her refrigerator.”

17. Delaware Park security further alleged that, during their investigation and inspection of the hot walker’s dorm, Respondent “rapidly took an item from the refrigerator and left the room . . . disposing of the item in the trash.”

18. Following a hearing, on or about November 20, 2019, DTRC affirmed the Delaware Park Stewards suspension and penalty, finding:

By taking evidence that was about to be seized by investigators, Mr. Vitali interfered with and impeded an investigation . . . and the \$2,500 fine and 365-day suspension is affirmed and the appeal is denied . . .

Jockey Club

19. In 2017, Respondent was the subject of disciplinary action taken by the Jockey Club.

20. The Jockey Club is the breed registry for Thoroughbred horses in the United States and Canada and is dedicated to the improvement of Thoroughbred breeding and racing.

21. In or about January 2017, the Jockey Club denied Respondent for two years all privileges of The American Stud Book, because, on seven occasions within a 365-day period, he violated a racing statute, rule or regulation relating to prohibited or restricted drugs, medications or substances in a Thoroughbred.



NYRA May Exclude or Deny a Trainer Access to its Facilities and Privileges Thereon

22. In accordance with the Franchise Agreement entered into on September 12, 2008 by and among The New York Racing Association (“NYRA”) and the New York State Franchise Oversight Board, NYRA has the right and responsibility to manage and operate all functions at the racing facilities known as Belmont Park, Saratoga Race Course and Aqueduct Racetrack.

23. NYRA has a legal right to ban from its Racetracks individuals whose presence it finds detrimental to the best interests of racing. In fact, the rules and regulations of the New York State Gaming Commission ("the Commission") codify the common law right of a racetrack operator to exclude individuals, including individuals possessing Commission-issued licenses. Specifically, the Commission's regulation that addresses the power of a racetrack steward to exclude persons from the racetrack or suspend a license for up to 60 days, concludes with the following statement:

Nothing in this section shall be construed to limit any racing association or track licensee's power to exclude or deny any individual from its grounds or privileges thereon. (9 N.Y.C.R.R. § 4022.12).

36. The Commission's regulations also authorize NYRA to cancel or revoke entries of horses by any person without notice. See *id.* § 4025.2 ("The nominations or entries of any person, or the transfer of any nomination or entry, may be cancelled or revoked without notice by the racing association or in the discretion of the commission or of the stewards.").

24. NYRA has a lawful right to exclude or deny a licensed trainer of Thoroughbred horses from its facilities or privileges thereon, subject to the requirements of due process, in accordance with *Matter of Saumell v. N.Y. Racing Ass'n*, 58 N.Y.2d 231, 447 N.E.2d 706, 460



N.Y.S.2d 763, 765 (N.Y. 1983), *Jacobson v. New York Racing Ass'n*, 33 N.Y.2d 144, 305 N.E.2d 765, 350 N.Y.S.2d 639 (N.Y. 1973), and 9 N.Y.C.R.R. § 4022.12.

STATEMENT OF CHARGES

Charge I: Conduct Detrimental to the Best Interests of Racing

Respondent is charged with engaging in conduct detrimental to the best interests of Thoroughbred Racing. Respondent's conduct has harmed the reputation and integrity of the sport, as well as the public's perception of the sport's legitimacy. As a result of Respondent's conduct, NYRA seeks to exercise its reasonable discretionary business judgment to exclude Respondent from entering or stabling horses on the grounds it operates, or any portion of such grounds.

Charge II: Conduct Detrimental to NYRA's Business Operations

Respondent's conduct has impeded NYRA's ability to effectively supervise the activities at the racetracks it operates so that its patrons have confidence that the sport is honestly conducted, protecting competitors from the participation in tainted horse races, and safeguarding the wagering public. NYRA is obligated to protect its investment, brand and reputation, and supervise activities at its Racetracks in a manner that fosters the public's confidence in the safety and honesty of the sport. As a result of Respondent's conduct, NYRA seeks to exercise its reasonable discretionary business judgment to exclude Respondent from entering or stabling horses on the grounds it operates, or any portion of such grounds.

Date: September 9, 2021
Jamaica, New York

Stuart Subotnick
Racing Committee Chairman
The New York Racing Association, Inc.