

RACING APPEALS AND DISCIPLINARY BOARD

400 Epsom Road Flemington VIC 3031 Telephone: 03 9258 4260 Fax: 03 9258 4848

radboard@racingvictoria.net.au

DECISION

RACING VICTORIA STEWARDS and

MITCHELL FREEDMAN

Date of Hearing 4 October 2017

<u>Panel</u> Judge Bowman (Chair), Prof Raymond Harbridge, Shaun Ryan.

<u>Appearances</u> Mr Daniel Bolkunowicz appeared for the stewards.

Mr Damian Sheales of counsel appeared for Mr Freedman.

Charge AR 175(o)(iv)

'The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise: (o) Any person in charge of a horse who in their opinion fails at any time: (iv) to provide proper and

sufficient nutrition for a horse.'

<u>Summary</u> The stewards alleged that Mr Freedman did not provide the horse

Mywordsaidthebird with proper and sufficient nutrition during the period from 5 May 2016 to 8 November 2016, in contravention of AR

175(o)(iv).

<u>Plea</u> Not guilty

<u>Decision</u> The Board does not find the charge proved. The charge is therefore

dismissed.

TRANSCRIPT OF

PROCEEDINGS

RACING APPEALS AND DISCIPLINARY BOARD

HIS HONOUR JUDGE J. BOWMAN, Chairman PROFESSOR R. HARBRIDGE MR S. RYAN

EXTRACT OF PROCEEDINGS

DECISION

RACING VICTORIA

and

MITCHELL FREEDMAN

RACING VICTORIA CENTRE, FLEMINGTON

WEDNESDAY, 4 OCTOBER 2017

MR D. BOLKUNOWICZ appeared on behalf of the RVL Stewards

MR D. SHEALES appeared on behalf of Mr M. Freedman

CHAIRMAN: Mr Mitchell Freedman, you have been charged with a breach of AR 175(o)(iv), in that it was alleged that, being the person in charge of a horse, namely Mywordsaidthebird, between 8 May 2016 and 8 November 2016, you failed to provide it with sufficient nutrition.

Many of the facts in this case are not in dispute. You trained the horse at your Warrnambool stables from late 2015 until 8 November 2016. The horse last raced with you as trainer on 4 May 2016 and was put out on 5 May. You informed the owners that effectively you did not want to continue training it. It was out and agisting near your stables until 8 November 2016. It was then moved to the stables of Ms Donna Gaskin in Echuca. Some of the delay in moving the horse related to alleged non-payment of fees but that has little or no bearing upon the case before us.

The matter to be borne in mind is this: at times the Stewards' case drifted more towards a failure to look after the welfare of the horse in relation to matters such as worming and the like. You have not been charged with a breach of AR 175(o)(iii), either in the alternative or at all. That subrule deals with the provision of veterinary treatment. This case is confined to a charge of failing to provide proper and sufficient nutrition.

Evidence on behalf of the Stewards was taken from Mr Mark Stevens, stipendiary steward; Ms Gaskin; Dr Jeanette O'Reilly, a veterinary surgeon; Dr Grace Forbes, veterinary surgeon, and Mr Lee Manning, an owner of the horse. The defence called no evidence. Helpful submissions were received on

.Freedman 4/10/17

behalf of each party. The standard of proof is that stage of comfortable satisfaction which is referred to as the Briginshaw test.

We say now that we are not satisfied that the Stewards have made out their case and discharged the burden of proof. Neither veterinary expert saw the horse shortly after its arrival to Ms Gaskin. Each saw photographs taken by Ms Gaskin and by the Stewards on 10 November 2017. Certainly in those photographs the horse has a long and straggly coat and looks thin. The cause of its appearance could relate to the provision of nutrition or lack thereof. Whether that is proof of a failure to provide proper and sufficient nutrition is another matter. However, we need not go any great distance in dealing with an argument concerning that.

The bottom line is that two expert veterinarians were called by the Stewards. Each expressed concern in relation to the appearance of the horse in the photographs of 10 November 2016. Dr O'Reilly saw the horse itself on 17 November 2016 in addition to seeing the earlier photographs and by then it had improved. However, each expert referred to the condition of the horse as being "marginally acceptable". To state the obvious, there is no evidence to the contrary. We accept those opinions.

We agree that this rule, including its subrules, basically addresses the issue of animal welfare and cruelty. If two expert veterinarians called by the Stewards expressed the opinion that the horse's condition at its worst was marginally acceptable, that is virtually the end of the matter.

.Freedman 4/10/17

We would emphasise that on the available evidence on 10 November 2016, the horse was at its worst. By 17 November 2016, it had improved. By 28 February 2017 it was back in work. It has continued to race and with some success. Thus, on the evidence at its very worst, it was "marginally acceptable".

There are other issues. The horse could have been suffering from worms. Ms Gaskin thought that it was, saying in her oral evidence that it would have been full of worms and giving reasons relating to its appearance as to why this was so. That of course ventures into the area of veterinary treatment. Other suggestions for its appearance such as stress were ventilated, but they are areas into which we need not venture. A strong suspicion may exist that you could have done more about the condition of the horse or taken greater notice of it, but that is not what we are here to determine.

The evidence before us does not establish that there was a failure to provide proper and sufficient nutrition. The condition was always at least marginally acceptable, even at its worst. So the burden of proof has not been discharged and the application is dismissed.
