

RACING APPEALS AND DISCIPLINARY BOARD

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DECISION

RACING VICTORIA STEWARDS and

MATTHEW CUMANI

Date of Hearing: 16 May 2017

- Heard by: Judge Bowman (Chair)
- Appearances: Mr James Ogilvy appeared as counsel for the stewards. Mr Joe Ferwerda of Counsel, instructed by Ryan Carlisle Thomas, appeared on behalf of Mr Cumani.
- Charge 1 Breach of AR 175A

Any person bound by these Rules who either within a racecourse or elsewhere in the opinion of the Principal Racing Authority (or the Stewards exercising powers delegated to them) has been guilty of conduct prejudicial to the image, or interests, or welfare of racing may be penalised.

Charge 2 Breach of AR 64K(2)

A person who owns or is in charge of, or has in his possession or control, a horse which the person suspects or should reasonably suspect is infected with a notifiable disease or condition, and who does not, as soon as possible after he should have suspected or became aware that the horse is infected, report the fact to the Principal Racing Authority in that State or Territory by the quickest means of communication available to the person is guilty of an offence.

- <u>Particulars</u> The charges relate to Mr Cumani's failure to notify Racing Victoria stewards of a case of strangles in his stables between 27 October 2016 and 23 November 2016.
- Plea: Guilty charge 1 and charge 2.

Decision: In relation to each of charge 1 and charge 2, Mr Cumani is convicted and the following penalties are imposed and are to be served concurrently with one another:

- Mr Cumani's licence to train is suspended for a period to expire at midnight on Monday, 31 July 2017. The commencement date of the period of suspension is deferred for 7 Clear Days from today's date; and
- (ii) A fine of \$20,000 is imposed due on or before 31 July 2017.

TRANSCRIPT OF PROCEEDINGS

RACING APPEALS AND DISCIPLINARY BOARD

HIS HONOUR JUDGE J. BOWMAN, Chairman

EXTRACT OF PROCEEDINGS

DECISION

RACING VICTORIA STEWARDS

and

MATTHEW CUMANI

RACING VICTORIA CENTRE, FLEMINGTON

TUESDAY, 16 MAY 2017

MR J. OGILVY appeared on behalf of the RVL Stewards

MR J. FERWERDA (instructed by Ryan Carlisle Thomas) appeared on behalf of Mr M. Cumani

CHAIRMAN: Mr Matt Cumani, you have pleaded guilty to breaches of AR 175A and AR 64K. Essentially, you failed to notify the Stewards of an outbreak of strangles at your Ballarat stables until 23 November 2016, having been made aware of at least one horse with strangles by 27 October 2016. That is a summary of the breach of AR 64K.

Strangles is a listed disease pursuant to that provision. If infection is suspected or reasonably suspected, the Principal Racing Authority must be satisfied by "the quickest means of communication available". Not to do so is to be guilty of an offence.

The charge under AR 175A to which you have pleaded guilty relates to conduct prejudicial to the image or interest or welfare of racing. In my opinion, your conduct certainly falls within that wording.

The bases of the charges overlap almost entirely. It is the one course of conduct, and I shall discuss that course of conduct and its effects as a unit.

I take into account your early plea of guilty and your ready cooperation with Stewards once they became involved. I also take into account the many very powerful references tendered on your behalf, including that of Mr Terry Henderson of OTI who has played a significant role in your becoming established in Australia and at Ballarat. He has also placed horses with you, including Grey Wolf which was your first Melbourne Cup runner during the period that this course of conduct occurred. Mr Henderson's lengthy reference is particularly well balanced and expressed. Apart from strongly supporting you and highlighting your many admirable qualities, it also makes apparent Mr Henderson's disappointment and anger at what you had done, jeopardising not only your own training career and stable operations but also potentially the operations of others. Strangles is highly contagious, and Mr Henderson's observation, going beyond his own direct interest in referring to the welfare of others, is both very appropriate and very relevant.

As stated, there are other powerful references, including some from England and the United States. There are also some instances of high praise for you contained in the transcripts of the various interviews conducted by the Stewards. These were pointed out by Mr Ferwerda who spoke very eloquently on your behalf and covered all issues that required attention.

I also bear in mind what Mr Ferwerda said as to the present size of your operation. You have 54 horses in work and a staff of 29. Many owners and staff members have a direct interest in the outcome of this hearing. Nothing is alleged against you in relation to any previous breaches of the rules. Keeping this in mind, I am not of the view that specific deterrence plays a large role in this sentencing exercise. I do not regard you as a person who is likely to offend again in this way or indeed in any other major way.

General deterrence is another matter. As stated by Mr Ogilvy on behalf of the Stewards, a clear message must be sent to trainers in the industry. The reporting of outbreaks of the listed diseases must be done by the quickest possible means. You did not do this for reasons basically associated with your own interests and your apparent determination that your stables should not be shut down and quarantined at a very important time of the year. The industry must be sent a clear message that this sort of behaviour will not be tolerated and that a substantial penalty awaits those that do not comply with the rules. Immediate notification is necessary so that equally immediate steps and quarantining can take place.

As Mr Ogilvy pointed out, in April 2016, a complete meeting at Wangaratta was abandoned and the racecourse placed in lockdown when an on-course trainer notified Stewards of a case of strangles detected in one horse at his stables. This is an example of the drastic and immediate action that needs to be taken.

I have referred to matters in your favour. I will now list some of the matters involving your behaviour causing concern when it comes to the imposition of a penalty. Firstly, such a breach of the rules have a potentially damaging effect upon the image of racing. I do not believe I need to expand on that.

Next, the welfare of the individual horses is at least potentially compromised. Luckily, the spread of the disease was not as widespread as it might have been, but the potential was there for a considerable number of horses to be stricken with strangles. Thirdly, the stables of other trainers at Ballarat and potentially elsewhere were put at risk. The short-term livelihood of others was put in jeopardy. In the case of one trainer, Mr James Wardeiner, that risk became a reality. His stable and horses were quarantined for a fortnight when the Stewards investigated what had occurred.

Fourthly, there was no ignorance of your obligations on your part. Apart from the fact that as a licensed trainer you were expected to know of those obligations, you were specifically told of your duty to report by your vet, Dr Anderson, in late October 2016, but you did not do this until 23 November when the cat was effectively out of the bag in any event.

That leads me to the next point. Rather than notifying Stewards which would have led to quarantining your stables and horses, you simply continued to train. You certainly took some measures in relation to your stables and horses but they were by no means complete. Your basic and primary obligation was to report that situation to the Stewards immediately. Instead, you pressed on, possibly influenced by the fact that you had your first Melbourne Cup runner. Essentially, you put your interests ahead of those of the Stewards, your fellow trainers, proprietors of other racing establishments and your owners.

Sixth, you did this at the time of the racing year when racing was very much in the spotlight. The Spring Carnival was in full flight. The Melbourne Cup was run. Your local cup, the Ballarat Cup, was run. Potentially, you jeopardised the running of the most important day on the Ballarat racing calendar. Next, you failed to notify your staff, with one limited exception, of what was occurring. They were not notified of the outbreak of strangles until approximately the time when the Stewards were notified.

Eighth, you went ahead and conducted an open day on the morning of the Ballarat Cup. It is evident from the photos and the Stewards' material that a considerable number of people attended this. People wearing ordinary clothing were wandering around what should have been a quarantine area.

Further, for the purposes of the open day, the horse Jack was moved to new or different stables. This was in direct disobedience of the instruction given to you by Dr Anderson.

Finally, and tenth, you failed to notify your owners of the outbreak until late November. This failure included a failure to notify loyal and strong supporters such as Mr Henderson who had played an important role in you becoming established.

When I weigh up all these matters, I am of the view that both a period of suspension and a significant fine are warranted. The period of suspension is considerably less than it might have been and is not a period of disqualification thanks to the material put before me by Mr Ferwerda and the powerful references on your behalf. On the charge of breaching AR 175A, you are suspended for the balance of this racing year, that is, you are suspended until and may resume training on 1 August 2017. Further, you are fined the sum of \$20,000.

The penalty for the breach of AR 64K is the same but is totally concurrent with your breach of AR 175A.

In summary, Mr Cumani's licence to train is suspended for a period to expire at midnight on Monday, 31 July 2017. The commencement date of the period of suspension is deferred for seven clear days from today's date. The fine of \$20,000 which is imposed is due on or before 31 July 2017.
