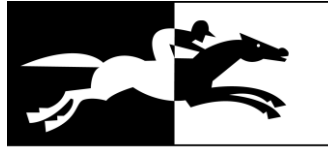


Registrar  
Racing Appeals and Disciplinary  
Board



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## HEARING RESULT

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**Distribution:** Chief Executive  
Group Integrity Services, Group Racing  
Group Racing Development  
Credit Controller  
ATA  
TVN  
Office of Racing  
S. Carvosso – Racing NSW  
Racing Press

**FROM:** Registrar – Racing Appeals and Disciplinary Board

**DATE:** 14 August 2009

**SUBJECT:** **HEARING RESULT – TRAINER DAVID MILLER**

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**Panel** Mr Brian Forrest (Acting Chair), Mr Joshua Bornstein, Mr Bill Knights

**Appearances:** Mr Paul Galbally of Galbally & O'Bryan appeared on behalf of Mr Miller.  
Mr James Ogilvy, lawyer for RVL, appeared on behalf of the Stewards.

**Charge 1** Breach of AR 175 (o)(i) - [failure to exercise reasonable care of a horse to prevent the commission of an act of cruelty]

**Charge 2** Breach of AR 175 (gg) - [false statement]

The charges relating to the mare *Follow that Theme*.

**Plea** Charge 1 – Guilty  
Charge 2 - Guilty

**Decision** **Charge 1** – convicted and Mr Miller's licence to train suspended for a period of 12 months, the period of suspension to commence at midnight Friday 21 August 2009.

**Charge 2** – convicted and fined the sum of \$500, fine to be paid on or before 15 September 2009.

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**Georgie Curtis**  
Registrar - Racing Appeals and Disciplinary Board

# **TRANSCRIPT OF PROCEEDINGS**

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## **RACING APPEALS AND DISCIPLINARY BOARD**

**MR B. FORREST, Acting Chairman**  
**MR J. BORNSTEIN**  
**MR B. KNIGHTS**

### **EXTRACT OF PROCEEDINGS**

#### **DECISION**

**TRAINER: DAVID MILLER**

**MELBOURNE**

**FRIDAY, 14 AUGUST 2009**

MR J. OGILVY appeared on behalf of the Stewards

MR P. GALBALLY appeared on behalf of Mr D. Miller

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ACTING CHAIRMAN: Mr David Miller, a licensed trainer, has pleaded guilty to two charges laid by Racing Victoria Ltd stewards. Charge 1, under AR.175(o) paragraph (i): failing to exercise reasonable care to prevent the commission of an act of cruelty to the horse, Follow that Theme, registered in his name and in his charge; charge 2, under AR.175(gg), of making a false statement to stipendiary steward, Dion Villella, during a preliminary interview at Garfield on 20 May 2009.

Relevant particulars of charge 1 are as follows: on or before 20 May 2009, you failed to exercise reasonable care to prevent the commission of an act of cruelty, in that you failed to ensure that Follow that Theme (a) was provided with proper and sufficient nutrition and to take steps to ensure that Follow that Theme was given appropriate care and attention, including by obtaining veterinary care after she lost condition and became emaciated and (b) was provided with proper care, including veterinary care and the provision of pain relief in the circumstances where she had or was suffering from (1) a swollen left hind leg; (2) sore forelegs and (3) a pussy discharge in the right eye. Your failure to exercise reasonable care as outlined above caused the commission of an act of cruelty upon a horse, in that Follow that Theme became emaciated, was suffering from untreated ailments and was generally in a very poor condition, such that she had to be euthanased after 20 May 2009.

The undisputed facts are as follows: Mr Miller trains from a rented property at Longwarry Road, Garfield. During the course of a stable inspection on 20 May 2009, stewards Dion Villella and Sam Shinsky observed the chestnut mare,

later identified as Follow that Theme, a 17-year-old former racing mare and in the registered ownership of Mr Miller since 18 April 1997. The mare, in very poor condition, was in a five-acre paddock with two other mares and two filly foals. The other horses were in fair condition.

When questioned concerning the condition of Follow that Theme, Mr Miller answered she had deteriorated very quickly since January due to the hot weather and had always lost condition during winter in previous years. He further said she is fed grass hay along with four other horses in the paddock. Mr Miller acknowledged that Follow that Theme had not had any veterinary treatment since her deterioration but he had wormed her on two occasions.

Mr Miller also acknowledged he was the owner of the mare:

*I've had her for a fair while now, a number of years.*

Dr Paul O'Callaghan, chief veterinary officer of Racing Victoria Ltd, inspected Follow that Theme at Mr Miller's property on 21 May 2009, accompanied by steward, Sam Shinsky. He reported that the mare was in extremely poor condition. Using the Department of Primary Industries condition scoring system for horses, he assessed the mare's condition to be zero, equating to very poor in a table ranging from zero to 5, very fat. In his report, Dr O'Callaghan wrote:

*The left hind leg was swollen from the foot to the hock. The reason for this was not apparent. The right foreleg was moderately swollen from the foot to the upper cannon. The reason for this swelling was not apparent. Both front feet were overgrown and there was marked flaring of the hoof walls. When the mare walked,*

*she appeared very weak and showed signs of soreness in the forelegs. The right eye of the mare had a pussy discharge. The cause of discharge was not apparent.*

*It is my opinion that the degree of wasting shown by the mare would have taken considerable time to develop. Combined with the state of the mare's feet and the swelling in the legs, I believe it is probable that the health and wellbeing in this mare has been severely neglected.*

During interview by stewards on 20 May 2009, Mr Miller falsely claimed that he had arranged for Follow that Theme to be euthanased by Loch knackery about 10 days earlier, when in fact Mr Miller's first contact with that knackery in relation to the mare was on the day he was interviewed by stewards.

The material before the Board contains a number of photographs of Follow that Theme taken by stewards on 20 May 2009. These provide a stark reinforcement of Dr O'Callaghan's observations in that they depict an animal in a pitiful condition.

To say that a license to train horses carries with it certain rights and obligations is merely to state the obvious. For a trainer to permit a horse in his charge to be neglected to the extent displayed by the photos is, in the absence of a reasonable explanation, nothing short of cruelty and the dereliction of a trainer's responsibility to the horse.

The Board has given careful consideration to the submissions made by Mr Ogilvy on behalf of the stewards and Mr Galbally for Mr Miller. In reaching our decision, the Board has had regard to both specific and general

deterrence as relevant considerations, given the nature of the offence of cruelty to an animal.

On Mr Miller's behalf, Mr Galbally provided a number of testimonials. These, particularly those provided by persons helped by Mr Miller on the day and in the aftermath of the Black Saturday bushfires, convey a generous side to his character.

He has accepted responsibility for his actions by pleading guilty to these offences and although at a late stage, expressed contrition and offered an apology for his actions and he is therefore entitled to some consideration for these matters. We have also taken into account Mr Miller's personal circumstances as outlined by his counsel, including his age and lifetime around horses.

At the end of the day, the Board is left with no exculpatory explanation of what occurred and in the circumstances, the seriousness with which the Board regards the offence of cruelty has to be reflected in the penalty as well as taking into account the considerations raised by both counsel.

The decision of the Board is as follows: for charge 1, of breaching AR.175(o)(i), Mr Miller's licence to train be suspended for 12 months, and for charge 2, of breaching AR.175(gg), the Board imposes a fine of \$500.

There will be a stay of one month on the payment of the fine, which will be on or before 15 September 2009. The implementation of the period of suspension will be stayed until midnight on 21 August 2009.

**END OF EXTRACT**