

RACING APPEALS AND DISCIPLINARY BOARD

400 Epsom Road Flemington VIC 3031 Telephone: 03 9258 4773 Fax: 03 9258 4848

radboard@racingvictoria.net.au

DECISION RACING VICTORIA STEWARDS and

ANDREW BENYAN

Date of Hearing 28 November 2018

<u>Panel</u> Judge John Bowman (Chair)

Appearances Patrick Considing instructed by Daniel Bolkunowicz appeared on

behalf of the Racing Victoria Stewards.

Andrew Benyan represented himself.

<u>Charge 1</u> Charge One: 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.

Summary On 4 April 2018, the racehorse *Propiska* was examined by a

Racing Victoria Veterinarian and was found to be a body

condition score of 1 out of 5.

Propiska's body condition score on 4 April 2018 resulted from Mr Benvan's failure to provide proper and sufficient nutrition in

the period he was its owner and/or trainer.

<u>Plea</u> Guilty

<u>Penalty</u> Mr Benyan convicted and suspended for a period of

3 months. Pursuant to AR 183F(3), during the period of his suspension, Mr Benyan must not have care, custody or control

of any thoroughbred.

The Board orders that the suspension commences on

28 November 2018.

Grace Gugliandolo Registrar Racing Appeals and Disciplinary Board

TRANSCRIPT OF

PROCEEDINGS

PROCEEDINGS	
RACING APPEALS AND DISCIPLINARY BOARD	
HIS HONOUR JUDGE J. BOWMAN, Chairman	
EXTRACT OF PROCEEDINGS	
DECISION	
RACING VICTORIA STEWARDS and ANDREW BENYAN	
RACING VICTORIA CENTRE, FLEMINGTON WEDNESDAY, 28 NOVEMBER 2018	
MR P. CONSIDINE appeared on behalf of the RVL Stewards	
MR A. BENYAN appeared on his own behalf	

.Benyan 28/11/18

CHAIRMAN: Mr Andrew Benyan, you have pleaded guilty to a breach of AR 175(o)(iv), in that being the part-owner and trainer of the racehorse, Propiska, you failed to provide to it sufficient nutrition in the period when you were its owner or trainer.

I say at the outset that charges against people who look after racehorses and who fail to provide sufficient nutrition are very serious charges indeed. As I have said in earlier cases, the need for general deterrence is a very large factor. The failure to provide sufficient nutrition will not be tolerated. Apart from the sympathy that people quite properly and understandably have for underfed or mistreated horses, there is the whole question of the image of racing. The welfare of racehorses is always in the spotlight and this is also fully understandable. The penalty imposed should reflect this and should be imposed bearing in mind general deterrence and, if appropriate, individual or specific deterrence.

In your case, there are a number of factors which, whilst they do not diminish the seriousness of this type of offence, do operate in your favour. Firstly, there is your very early plea of guilty and the remorse which you have shown. That is clear from what you have had to say today. Secondly, a number of previous Australian cases involve a number of horses. You are only charged in relation to one horse. That is one too many, but at least there is not a greater number of horses as has been seen in some other cases.

.Benyan 28/11/18

Thirdly, I accept that there was a sequence of events which would indicate that what occurred was more a misunderstanding and carelessness on your part, rather than wilful underfeeding or complete disinterest and total absence of care.

Propiska had been retired from racing and placed on a property where unfortunately there was ultimately a shortage of natural feed. That is absolutely no criticism of the owner or occupier of the property. The fact of the matter is that the climatic conditions led to an almost complete absence of natural feed.

You were still the registered trainer and part-owner of Propiska. The amount of feed that you dropped off for her was simply inadequate and you should have realised this. However, you had organised for Propiska to go to a new owner. This would represent a very good home for the horse. The new owner, Ms Tash Hall, sounds an ideal owner and will use Propiska in the Riding For the Disabled program. It would seem that perhaps in anticipation of this transfer, you neglected to keep up the level of care and feeding that was required. This is no excuse, but it is a part explanation.

You have cooperated fully with the stewards at all times. You have no prior convictions of any relevance. As Mr Considine on behalf of the Stewards very properly brought to my attention, there are circumstances in this case which distinguish it from similar previous cases. The Stewards argue for a period of suspension with an additional clause added and not for a fine, as a fine would

.Benyan 28/11/18

not properly reflect the seriousness of an animal welfare charge such as this.

Your present position is that you continue to hold a trainer's licence, although you currently are not training any horses. You are a part-owner of two racehorses.

I agree with the Stewards that the gravity of this offence warrants a penalty greater than a fine. A clear message must be sent in relation to animal welfare. I also agree with them that the particular and slightly unusual circumstances of your offending warrants a penalty of suspension as opposed to disqualification. I emphasise that this is because of the particular circumstances of your case and as outlined by the Stewards. I am also of the view that there be an additional clause, that during the period of suspension you have no care, control or custody of any thoroughbred.

The period of suspension that I impose is one of three months. During that period, you are not to have the care, control or custody of any thoroughbred. You hope to resume and continue in the racing industry as a trainer, but of course this conviction will be forever on your record. So it is a period of suspension of three months, and you are not to have the care, control or custody of any thoroughbred. The period of suspension will start from today.
