



DECISION

RACING VICTORIA STEWARDS

and

Jody Thompson

- Date of Hearing** 14 March 2018 and 11 April 2018
- Panel** Judge Bowman (Chair), Darren McGee, June Smith.
- Appearances** Daniel Bolkunowicz, appeared on behalf of the stewards.
- Mr Jeffrey Levine of counsel appeared on behalf of Jody Thompson.
- Charge 1** 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.'*
- Charge 2** AR 175(o)(iii)
- '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: (iii) To provide for veterinary treatment where such treatment is necessary for the horse.'*
- Summary of Particulars**
- Charge 1** In contravention of AR 175(o)(iv), the stewards alleged that during the period from approximately 25 December 2016 to about 27 January 2017, Ms Thompson failed to provide proper and sufficient nutrition for *Skating for Gold*.
- Charge 2** In contravention of AR 175(o)(iii), the stewards alleged that prior to about 29 January 2017, Ms Thompson failed to obtain veterinary treatment where such treatment was necessary for the horse in respect of:
- (a) the heel injury; and or
 - (b) the horse's poor body condition.

Plea

Charge 1 - Not Guilty
Charge 2(a) and (b) - Not Guilty

Decision

Charge 1 - The Board finds the charge proved.

Charge 2(a) - The Board does not find this part of the charge proved. The charge is therefore dismissed.

Charge 2(b) - The Board finds the charge proved.

Penalty

Charge 1 - Ms Thompson is convicted and disqualified for a period of 3 months.

Charge 2(b) - Ms Thompson is convicted and disqualified for a period of 1 month.

The periods of disqualifications are to be served concurrently - a total period of disqualification of 3 months.

The Board orders that the commencement of the period of disqualification be deferred until 12.01am Thursday 19 April 2018, it being the maximum period of deferral of the disqualification as permitted by the rules; see AR 196(6).

Pursuant to AR 196(6)(b) Ms Thompson must not start a horse in any race from the date of the Board's decision, 11 April 2018, until the expiration of the period of disqualification.

Grace Gugliandolo
Registrar - Racing Appeals and Disciplinary Board

**RACING APPEALS AND DISCIPLINARY BOARD
(Original Jurisdiction)**

Racing Victoria Stewards

v

Jody Thompson

DECISION

Judge Bowman	Chair
Mr D McGee	Member
Dr J Smith	Member

Ms Thompson, you have been charged with a breach of AR 175(o)(iv) in that, being a licensed trainer and the registered owner of *Skating for Gold*, a horse which retired from racing about 8 November 2015, from approximately 25 December 2016 to about
5 27 January 2017, you failed to provide sufficient nutrition for that horse.

You are also charged with breaching AR 175(o)(iii) in that you failed to provide veterinary treatment for the horse where such treatment was necessary and in particular:

- a. in respect of a wound on the left fore heel; and
- 10 b. in respect of the horse's poor body condition.

You have pleaded "not guilty" in respect of each charge and both parts of the second charge.

The relevant facts can be summarised as follows. In late 2015 the horse was seen by Dr. Kim McKellar for an opinion as to whether it should be retired. It had a couple
15 of problems, including quittor on its left fore heel. A quittor is a type of off and on discharging sinus above the coronary band. Horses suffering from quittor tend to suffer from a build up of sinus, ultimately causing lameness, before bursting and

discharging the pus or sinus. Once that happens, the condition settles down for a number of months before the building up process starts again. The lameness leading to bursting normally takes about 48 hours.

In any event, Dr McKellar suggested that the horse be retired and that occurred. He did not see the horse again until March 2017, and after the Stewards had arrived upon the scene.

Around about Christmas day 2016, you moved the horse from the paddock in which it had been to a paddock in Wallan. There were other horses in that paddock. Whilst there, it had a wind sucking collar put on it. The horse remained there until about 27 January 2017 when you moved the horse to your stables at Kilmore. On 30 January, your father, Mr Norm Thompson, rang veterinarian Dr Alison Miles at Romsey, essentially reporting that the horse had lost its collar and had lost weight. Dr Miles attended at the stables on 1 February.

The Stewards had apparently visited the stables on 30 January 2017, returning on 1 February 2017 and before the visit of Dr Miles. *Skating for Gold* had been noticed at the back of the stables. On 1 February you were interviewed and photographs were taken of the horse.

Dr Miles noted that the horse was in poor body condition, but was eating hard food. She visited again on 16 February. The horse was eating, was bright and alert and had put on condition. The hoof wound, which had been bandaged when she first visited, was clean and had been treated.

The horse was taken back to be seen by Dr McKellar on 15 March. A video, which was shown to us, was taken of it on that day. Dr McKellar also prepared a report on that day. By this time the horse was in good condition.

Evidence was given before us by Dr Paul Martin, Veterinary Surgeon, engaged by Racing Victoria, and Dr Grace Forbes, General Manager of Veterinary Services with Racing Victoria. Dr Martin had examined the horse and taken blood samples and the like. Dr Forbes had not seen the horse but had viewed the photos.

You gave evidence, and you called Dr McKellar and your father. In addition, helpful submissions were made by both legal representatives.

The test to be applied is the well-known one set out in *Briginshaw v Briginshaw*¹. The charges must be made out to the level of our comfortable satisfaction.

50 Dealing firstly with the charge pursuant to AR 175(o)(iv) – the failure to provide proper and sufficient nutrition – we have no hesitation in finding that we are comfortably satisfied that you are guilty of that charge.

The photos taken at your stables on 30 January 2017 show a horse that is in a very poor condition indeed, a horse which you trained and of which you are sole owner.

55 It is thin. Its ribs are very evident. Its neck and hindquarters have a narrow, wasted appearance. There are a lot of marks on its coat, which we accept are bite marks from other horses, indicating bullying. Even leaving to one side the wound on its heel, it is a photo of a horse in a very sad state.

The Code of Practice for the Welfare of Horses sets out the accepted method for
60 body condition scoring, the assessments ranging from 1 to 5. Paragraph 5.3 of the Code prescribes that a horse’s body condition must not be allowed to become less than 2. In the present case, Dr Martin, having examined the horse and run his hands over it, assessed its body condition at 1 – that is, poor. In his oral evidence, Dr Martin stated that “a horse in condition 1 is in less than the suitable condition in
65 which we should keep our horses”.

Dr Forbes, giving an opinion based on the photographs, also assessed the horse’s condition at 1. Dr McKellar, also basing his opinion on the photographs, put its condition as at 30 January at “probably 2”, but in cross examination stated that “it could be 1 and a half or 1 and three quarters” – in other words, below the required
70 level in the Code.

¹ (1938) 60 CLR 336.

The bottom line is that, as at 30 January 2017, *Skating for Gold* was in poor condition and patently had not been provided with proper and sufficient nutrition. The welfare of this horse was your responsibility.

75 We are not impressed by the argument that the appearance of the horse and its lack of sufficient nutrition was because it is a windsucker and, when it was in the paddock at Wallan, someone was repeatedly stealing or removing its windsucking strap or collar. Even if this occurred and interfered with it eating, this is no excuse. If it was occurring, and if this was affecting the horse's consumption of nutrition, the horse should have been moved, as it ultimately and belatedly was.

80 The fact of the matter is that it was not being looked after properly. You admitted when interviewed that since Christmas 2016, the horse had lost a lot of condition. You told the Stewards that you usually went to the Wallan paddock 3 or 4 times a week, but over Christmas and New Year "we didn't go that much".

85 It would also appear that you relied upon others visiting the Wallan paddock, rather than always checking up on the horse's welfare yourself.

You are the owner of *Skating for Gold*. The horse's welfare is your responsibility. You failed to provide sufficient nutrition to the horse. When it was removed from the Wallan paddock and fed and looked after properly, it rapidly regained condition. Dr McKellar gave evidence that a horse can improve from body condition 1 to 3 in
90 six weeks. That is what *Skating for Gold* did once it was looked after properly. Dr McKellar also stated that he has a look at his many horses twice a day. You gave your horse nowhere near that level of attention. It became the poor looking animal seen in the photographs and by Dr Martin as a result.

We find you guilty of the charge pursuant to AR 175 (o)(iv).

95 Turning to the charges pursuant to AR 175(o)(iii), we find that the first of these - the charge relating to providing veterinary treatment for the heel wound - has not been proved and that it is dismissed. Whilst we have some concerns, we have not arrived at the state of comfortable satisfaction required by the *Briginshaw* test.

100 The heel wound, or quittor, certainly has a dreadful and worrying appearance in the photographs. However, whether it should have been allowed to go untreated or simply left until it burst is not really to the point. There are clashing veterinarian opinions to this. The fact of the matter is that you say that you did consult a veterinarian when the horse first cut its heel. In late 2015 you had Dr McKellar inspect the horse so as to give an opinion as to whether it should be retired.

105 Dr McKellar noticed that, amongst other things, the horse has a quittor. He considered it a mild case. He advised that it was a condition that would probably be there for the rest of the horse's life; the horse was not too lame with it and there were no problems with it. In evidence, he made it clear that generally he was not in favour of surgery for quittors, unless something dramatic was required.

110 The key question does not concern whether Dr McKellar's views on quittor are correct or not. It concerns whether you failed to provide veterinary treatment. On balance, we cannot be comfortably satisfied that you failed to do so. You obtained a veterinarian opinion and it was, effectively, that there were no problems and nothing needed to be done. Whether you should have later pursued the problem
115 and obtained further veterinarian advice is a moot point. On balance, we are not satisfied that this part of the charge has been made out and it is dismissed.

There is then the further part of the second charge, which involves a failure to obtain veterinary treatment in respect of the horse's poor body condition. This charge overlaps considerably with Charge 1, the failure to provide sufficient nutrition. We
120 find it proven. No veterinary assistance or opinion was obtained until your father made contact with Dr. Miles on 30 January 2017. By then the damage was well and truly done. We are comfortably satisfied that this charge has been proven.

In summary, you are found guilty of the charge pursuant to AR 175(o)(iii) and the charge pursuant to part (b) of AR 175(o)(iii). The charge pursuant to part (a) of AR
125 175(o)(iii) is dismissed.

We shall hear the parties on the question on penalty.

**TRANSCRIPT OF
PROCEEDINGS**

RACING APPEALS AND DISCIPLINARY BOARD

**HIS HONOUR JUDGE J. BOWMAN, Chairman
MR D. McGEE
DR J. SMITH**

EXTRACT OF PROCEEDINGS

PENALTY

RACING VICTORIA STEWARDS

and

JODY THOMPSON

RACING VICTORIA CENTRE, FLEMINGTON

WEDNESDAY, 11 APRIL 2018

MR D. BOLKUNOWICZ appeared on behalf of the RVL Stewards

MR J. LEVINE appeared on behalf of Ms J. Thompson

CHAIRMAN: Ms Jody Thompson, we have found you guilty of one breach of AR 175(o)(iv) and one breach of part (b) of AR 175(o)(iii). You have contested both charges.

In essence, we have found that from approximately 25 December 2016 until 27 January 2017, you failed to provide sufficient nutrition to the horse, Skating For Gold, a retired racehorse of which you were the owner and had been the trainer, and that you failed to provide necessary veterinary treatment in respect of the horse's poor condition. You have continued to be a licensed trainer. We have taken note of the plea material advanced on your behalf to which we shall return.

We make these preliminary observations: we are very conscious of the need for general deterrence. The failure to provide proper and sufficient nutrition to a horse or to provide necessary veterinary treatment are both very serious matters and will not be tolerated. In relation to horse welfare, the industry and all involved with it should operate with the highest possible standards.

Whilst specific deterrence should always be borne in mind, in our view it is not a large sentencing factor in the present case. You have no relevant prior convictions or, for that matter, subsequent convictions. We accept that you continue to look after Skating For Gold, even though it has now been retired for a considerable period.

Your barrister, Mr Levine, has pointed to differences between this case and the local and interstate precedents put forward on behalf of the Stewards. We agree that those cases essentially involve multiple horses and, in some instances, specific injuries, and indeed one horse in another state had to be put down.

What we are dealing with in the present case is one horse neglected in relation to nutrition and appropriate veterinary care for a period of just over a month.

We accept that it was then appropriately fed and made a full recovery.

However, the fact of the matter is that prior to being removed by you from the paddock in question, it ended up in a very poor and thin condition. It also showed clear signs of being bullied by the horses with which it had been enclosed. It deserved proper attention and proper nutrition. It should have been moved much sooner than it was and veterinary treatment should have been sought much sooner.

We have read the character references provided and accept that there are more to similar effect. We have also taken into account your personal circumstances and your long history in racing. Mr Levine outlined these matters in his comprehensive plea. However, we also note that you do not get the benefit of a guilty plea. You have fully contested the case and not expressed remorse.

We do not accept that a fine is appropriate. Failing to provide appropriate nutrition and veterinary care for a horse is a very serious matter and can convey a very poor image of racing involving a lack of consideration for animal

welfare.

On the first charge, the failure to provide sufficient nutrition, you are disqualified for a period of three months. On the second charge, failure to provide veterinary treatment, you are disqualified for a period of one month. We accept that the particulars of the second charge overlap considerably the first, so the period of one month disqualification is to be served concurrently with the three-month period.

The end result is that you are disqualified for a period of three months, the commencement date of that period being 12.01 am on 19 April 2018.
