

HEARING RESULT

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FROM: Registrar – Racing Appeals and Disciplinary Board

DATE: 22 September 2014 (heard on 10 September 2014)

SUBJECT: **HEARING RESULT – TRAINER: NORMAN THOMPSON**

Panel Mr Brian Forrest (Deputy Chair), Mr Chris Fox, Ms Sara Hinchey.

Appearances Mr Thompson appeared on his own behalf.
Mr James Ogilvy appeared on behalf of the Stewards.

Charge 1 **AR 175(o)(i)**

*The Committee of any Club or the Stewards may penalise:
Any person in charge of a horse who in their opinion fails at any time:
To exercise reasonable care, control or supervision of a horse so as to
prevent an act of cruelty to the animal.*

Charge 2 **AR 175(o)(iv)**

*The Committee of any Club or the Stewards may penalise:
Any person in charge of a horse who in their opinion fails at any time: to
provide proper and sufficient nutrition for a horse.*

Charge 3 **AR 175A**

*Any person bound by these Rules who either within a racecourse or
elsewhere in the opinion of the Committee of any Club or the Stewards has
been guilty of conduct prejudicial to the image, or interests or welfare of
racing may be penalised.*

The charges relate to eight horses that were in Mr Thompson's care
between about 27 February 2013 and 2 May 2013.

Plea Charge 1 – not guilty.
Charge 2 – not guilty.
Charge 3 – not guilty.

Decision

The Board finds the charges proved.

Charge 1 – Mr Thompson convicted and disqualified for 12 months.

Charge 2 – Mr Thompson convicted and disqualified for 12 months.

Charge 3 – Mr Thompson convicted and disqualified for 12 months.

Each period of disqualification to be served concurrently, a total period of 12 months to commence midnight 30 September 2014.

Georgie Gavin
Registrar - Racing Appeals and Disciplinary Board

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

***RVL Stewards v Norman Thompson
Reasons for Decision***

Mr B Forrest	Deputy Chair
Mr C Fox	Member
Ms S Hinchey	Member

Background

1. Racing Victoria stewards have laid three charges under the Rules of Racing against licensed trainer Mr Norman Thompson.

Charge 1: Under AR 175(o)(i) of being the person in charge of a horse of failing to exercise reasonable care, control or supervision of a horse so as to prevent an act of cruelty to the animal.

Charge 2: Under AR 175(o)(iii) of failing to provide proper and sufficient nutrition for a horse.

Charge 3: Under AR 175A of conduct prejudicial to the image or interests or welfare of racing.

2. The charges concern eight horses which were located at Willowmavin Road, Kilmore between 27 February 2013 and 2 May 2013 and were laid by the stewards, subsequent to the prosecution of Mr Thompson by the RSPCA for eight offences under section 9 of the *Prevention of Cruelty to Animals Act 1986 (Vic)*.

The Magistrates' Court prosecution

3. Mr Thompson pleaded guilty to the eight charges (nine further charges having been withdrawn) at Seymour Magistrates Court on 22 May 2014 and was convicted and fined \$7,500 aggregate amount and ordered to pay RSPCA costs of \$25,586.09.

4. The RSPCA had investigated the welfare of the eight horses from 27 February 2013 until the horses were removed from the property by RSPCA officers on 2 May 2013.
5. A written prosecution summary of facts for the purposes of the Magistrates Court proceedings which was read to the court reads:

“ROYAL SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS (VIC)

Prosecution Summary

RSPCA v Norman Francis THOMPSON

This summary has been prepared as a guide only.

Norman THOMPSON, 'the accused' in this matter, was the person in charge of eight horses located at 105 Willowmavin Road, Kilmore ('the property').

On the 27th of February 2013, RSPCA Inspector Rachel WILLIAMS attended 'the property' and observed eight (8) thoroughbred horses in varying body conditions, most with large abdomens; three (3) of which were in a moderate to light body condition. 'The property' consisted of large paddocks which were in poor condition as they were covered in horse manure and the ground was dry with no pasture. There was no evidence of any hay or hard feed stored on 'the property' or fed out to the horses. There was a very small amount of water in a round concrete trough; all of the other water troughs on 'the property' were empty.

On the 5th of March 2013, WILLIAMS spoke with 'the accused' on the phone; he stated that he had attended the property and delivered two (2) round bales of hay and that water was provided. 'The accused' stated that he attends the property weekly to fortnightly to deliver feed and was aware that two of the horses were underweight. WILLIAMS instructed 'the accused' to provide the horses with parasite control, clean the paddocks, provide more hay and ensure water was provided.

On the 25th of March 2013, WILLIAMS attended 'the property' and noted that the eight (8) horses were beginning to lose body condition, they all had large abdomens and a significant amount of Botfly eggs on their bodies. The paddocks remained in the same poor condition, there was no evidence of any hay and all of the water troughs were empty. WILLIAMS provided some water to the horses which they drank thirstily. WILLIAMS contacted 'the accused' while at the property to advise notice's to comply would now be issued for appropriate feed, water and parasite control; she explained the notices would be left in the front gate of 'the property'.

On the 11th and 22nd of April 2013, WILLIAMS attended 'the property' and inspected the eight (8) horses; they were still covered in Botfly eggs and had large abdomens; their coats were dry and dull. WILLIAMS held great concern for one (1) horse in particular (763017) Bay mare, as it was being bullied by the other horses and had lost a lot of body condition. The paddocks had not been cleaned of manure and there was still no pasture growing. On the 11th of April there was a very small amount of water available to the horses and no hay. On the 22nd of April there was no water available to the horses and a small amount of hay at the front fence line. WILLIAMS collected a fresh faecal sample from one (1) of the horses on the 22nd of April.

The faecal sample collected from 'the property' was tested at IDEXX laboratories and the results were received by WILLIAMS on the 29th of April 2013. The result revealed 480 eggs per gram of Strongyles (intestinal worms).

Due to the ongoing welfare concerns for the horses housed on 'the property', WILLIAMS applied for and was granted a search and seizure warrant on the 30th of April 2013.

The warrant was executed by WILLIAMS at 'the property' on the 2nd of May 2013 at approximately 10.40am. WILLIAMS was accompanied by RSPCA Inspectors BOEKHORST and MARCHESANI, three (3) Victorian Police officers and veterinarian Dr. Mitchell BROWN. WILLIAMS attempted to contact the accused on his mobile to inform him of the warrant, the call was unanswered.

WILLIAMS conducted a final inspection of 'the property' and noted that there was still no feed and only a few inches of water available to the horses. Dr BROWN examined the eight (8) horses and stated that "four of them were malnourished with their ribs and hips being prominent. The other four horses were in slightly better condition, however, were still considered to be malnourished." Dr BROWN further stated that "the paddocks in which the horses were contained had minimal pasture available to graze and there was no obvious roughage available to them. The paddocks contained an excess of horse faeces, increasing the likelihood of parasitic infections."

The eight (8) horses were seized from 'the property' for ongoing welfare concerns and promptly transported to the RSPCA in Pearcedale where Dr Graham JEFFREY was awaiting their arrival. All eight (8) of the horses were provided with individual animal identification numbers.

Dr JEFFREY examined all eight (8) horses and stated that all of the horses presented with a harsh dry coat, a reflection of their general health, they also all had poorly maintained feet. Dr JEFFREY collected blood and faecal samples and provided a report on each horse:

- 763017 - Bay mare in poor body condition. Blood results indicated that the horse had an elevated fibrinogen, a result suggestive of active and chronic inflammation. The faecal egg count was 180 (strongyle spp) eggs per gram; this is indicative of inadequate parasite control.*
- 763013 - Chestnut gelding in poor to moderate body condition. The blood results had a high fibrinogen and total protein indicative of chronic inflammation and/or infection. The faecal egg count was 200 (strongyle spp) eggs per gram; this is indicative of inadequate parasite control.*
- 763018 - Chestnut gelding in moderate body condition. The blood results were normal, but with a mild eosinophilia, a finding consistent with a parasite burden. The faecal egg count was 330 (strongyle spp) eggs per gram; this is indicative of inadequate parasite control.*
- 763015 - Brown gelding in moderate body condition. The blood results had a high total protein indicative of chronic inflammation and/or infection. The faecal egg count was 650 (strongyle spp) eggs per gram; this is indicative of inadequate parasite control.*
- 763019 - Bay mare in moderate body condition. The blood results were essentially normal with some mild non specific changes. The faecal egg count was 80 (strongyle spp) eggs per gram.*
- 763016 - Chestnut gelding in poor body condition. The blood results were essentially normal with some mild non specific changes. The faecal egg count was 500 (strongyle spp) eggs per gram; this is indicative of inadequate parasite control.*

- 763014 - Bay mare in moderate body condition. The blood results were normal with some mild non specific changes. The faecal egg count was 40 (strongyle spp) eggs per gram.
- 763011 - Chestnut gelding in moderate body condition. Blood results were normal with some mild non specific changes. The faecal egg count was 500 (strongyle spp) eggs per gram; this is indicative of inadequate parasite control.

Dr JEFFREY conducted dental examinations and equilibrations on all of the horses, he reduced the sharp enamel points of the upper and lower molar arcades. Two (2) horses (763018) and (763019) both required further dental work and repeat dental examinations. Dr JEFFREY stated that appropriate dental care requires a routine annual examine which in this case has been neglected. In summary, the basic needs for health and well being, of a horse are simply, adequate feed and water, an appropriate parasite control program and routine hoof and dental care. These needs have not been met in this case and the horses have suffered prolonged neglect and compromise of their welfare.

The accused contacted WILLIAMS on the 10th of May 2013 to make claim on the eight (8) horses. The accused did not wish to participate in a record of interview.”

6. After the summary was read, Mr Henderson who appeared for Mr Thompson said:
“That’s a fair summary your Honour.”

The proceedings before the RAD Board

7. In the present proceedings, Mr Ogilvy who appeared for the stewards relied on the RSPCA prosecution summary of facts, the transcript of the Magistrates Court hearing and three sets of photographs taken by the RSPCA, the first on 27 February 2013 of the horses and horse paddock, a second on 2 May 2013 of the horse paddock and of the horses post seizure at the RSPCA premises at Pearcedale and a third, on 21 September 2013 at Pearcedale, by which time the horses had been in the care of the RSPCA since 2 May 2013.
8. Additionally, Mr Ogilvy relied on a report of Dr Brian Stewart, Head of Equine Welfare and Veterinary Services of Racing Victoria. Dr Stewart who had read the RSPCA summary and viewed the photographs wrote in his report:

“The report of the RSPCA inspector reveals that not only that the horses lost bod condition because of poor nutrition and, at times watering, but the overall management of the herd was completely inadequate in that proper worming, dental care and paddock management was not provided.

The fact the horses quickly regained condition and a good health status after receiving care from the RSPCA confirms that poor condition of the horses during March and April 2013 was the result of neglect.

In my opinion, the eight horses under Mr. Thompson's charge during the period from February 2013 to April 2013 that were seized by the RSPCA on the 2nd of

May 2013 were neglected by Mr. Thompson and that this degree of neglect may reasonably be defined to be animal cruelty.”

Was Mr Thompson "in charge" of the relevant horses?

9. Mr Thompson does not own the Kilmore property where the horses were located but has had the use of it for approximately eight years. He does not pay rent. A dwelling on the property is separately rented by tenants.
10. In his defence to the Steward's charges, Mr Thompson who represented himself at the hearing, sought to distance himself from the responsibility for the welfare of the horses, maintaining that the horses were not in his charge during the relevant period.
11. According to Mr Thompson, a then client of his stable, Mr John Beyer (who died recently) had in about August 2013 requested that some of his horses, who at the time were located elsewhere, be brought to the Kilmore property for a week or two until they were transferred to a property at Officer. Mr Thompson further said that shortly after this request was made, Mr Beyer requested that some further horses (bringing the total to eight) be brought to the property. Mr Thompson said that these additional horses belonged to a friend of Mr Beyer. The horses arrived at the Kilmore property in two lots in August 2013. The horses, all thoroughbred, were a mixture in that some had previously been trained by Mr Thompson for Mr Beyer, two had been purchased from Mr Thompson twelve months earlier, one, a retired racehorse, Mr Thompson had given to the friend of Mr Beyer, and there were some horses with which Mr Thompson had had no prior involvement.
12. Mr Thompson said that at the time the horses arrived he was owed more than \$11,000 in training fees by Mr Beyer and that he permitted the horses to be left on the property for a brief period, in the expectation of being paid the training fees when a property transaction in which Mr Beyer was involved, was finalised. Mr Thompson said he had several discussions with Mr Beyer about removing the horses and the training fees were never paid.
13. In relation to the guilty plea in the RSPCA prosecution, Mr Thompson acknowledged that he had read the prosecution brief of evidence and in discussion with his legal advisor, Mr Henderson, had wanted to defend the charges, but that the estimated legal costs were too high. A week or so prior to the hearing he instructed Mr Henderson, reluctantly Mr Thompson said, that he would plead guilty. Mr Thompson said that Mr Henderson then "did a deal" with the Prosecution. We note that this resulted in nine of the seventeen charges being withdrawn. Mr Thompson said that he

was not made aware of the prosecution summary of facts before it was read to the court.

14. In the plea made on Mr Thompson's behalf in the RSPCA prosecution, there is no reference made:
 - (a) to any issue or doubt as to who was in charge of the horses;
 - (b) of any concern which Mr Thompson had in relation to the arrangements for their stay at the property; or
 - (c) to the fact that Mr Beyer's actions in failing to pay Mr Thompson led to the financial difficulty which during the plea, Mr Thompson claimed was (at least in part) the reason for the neglect of the horses.
15. These were three key matters which were asserted by Mr Thompson in the present proceeding.
16. The transcript reveals that during the plea in the RSPCA prosecution, reference was made to Mr Thompson's background, his financial position and some matters personal to him and his family.
17. Mr Thompson had obtained a number of references which were tendered to the court. Surprisingly, given the way in which Mr Thompson portrayed his relationship with Mr Beyer to this Board, the references include one from Mr Beyer and in the plea. Mr Henderson made particular reference to a passage from Mr Beyer's testimonial, viz:

"In all this time I've only seen good of him [Mr Thompson] and certainly not mistreatment of his animals."
18. Prior to the laying of the present charges, Mr Thompson was interviewed by the stewards on 17 June 2014. In that interview Mr Thompson was critical of the RSPCA prosecution and its procedures regarding notices issued against him, claimed the horses had been wormed, a farrier attended to their feet and that hay had been provided. He also told stewards that he had leased another paddock to take the horses where there was plenty of feed. He did not at any stage claim that the horses were the responsibility of Mr Beyer.
19. In the present hearing Mr Thompson said he told RSPCA inspector Rachel Williams at the beginning of the investigation that he was not in charge of the horses and they

were not his responsibility. He added that he never was given a chance to have an interview with Inspector Williams. In relation to the last claim, the Board notes the comment in the prosecution summary that Mr Thompson "declined" to be interviewed.

20. Apart from Mr Thompson's own assertion to the Board that he raised the issue of responsibility for the horses with Inspector Williams at the outset, there is no evidence to suggest that any contact or communication was made by Mr Thompson and/or his legal advisors with the RSPCA in relation to this fundamental issue.
21. Nor, as noted above, did Mr Thompson claim when interviewed by the stewards that he was not responsible for the welfare of the horses.
22. Further in addition to the absence of any evidence that Mr Thompson or his legal advisors raised this matter with the RSPCA, the Board notes:
 - (a) the content of Mr Thompson's answers in the course of the steward's interview;
 - (b) the plea of guilty in the RSPCA prosecution;
 - (c) the acceptance of the accuracy of the RSPCA prosecution summary during that proceeding;
 - (d) the fact that nothing in relation to this matter was put on Mr Thompson's behalf during the plea (despite his assertion to this Board that he had instructed his lawyer in relation to this matter); and
 - (d) the reliance during the plea on a testimonial from the person now claimed to be responsible for the horses
23. Taking each of these matters into account, the Board rejects Mr Thompson's argument that he was not "in charge" of the relevant horses, as that term is used in AR 175(o).
24. The Board is satisfied that the horses were not simply "dumped" on Mr Thompson by Mr Beyer as was asserted by Mr Thompson during the hearing. Rather, the Board concludes that Mr Thompson acceded to the request by Mr Beyer for the horses to be located on the property – albeit for what Mr Thompson initially understood to be a limited period – because he hoped that this would increase, or at least not jeopardise, the prospects of his outstanding training fees being paid, including through the proceeds of a property transaction by My Beyer which was then in contemplation. Consistent with this, the evidence was to the effect that the horses were attended to by Mr Thompson for a period following their arrival, including provision of medical

attention by him and arranging for a farrier to attend to the horses. Mr Thompson also did not suggest that when the request was made by Mr Beyer, and agreed to by him, that he specified to Mr Beyer that whilst the property could be used for Mr Beyer's horses, Mr Thompson would not be responsible for them. That the horses may have remained on the property for longer than Mr Thompson contemplated, without any action by Mr Beyer or Mr Thompson to remove them, does not mean that Mr Thompson was not or ceased to be in charge of them.

Did Mr Thompson's conduct toward the horses constitute a breach of AR175(o)(i) and/or (iii)?

25. The observations of Inspector Williams on the five occasions that she inspected the property and the horses are detailed in the prosecution summary and are accepted by the Board as fact. They do not need repetition here and the Board notes that Mr Thompson did not take issue with those observations during this proceeding.
26. On 2 May 2013, the day the horses were removed from the property, two veterinarians Dr Brown and Dr Jeffrey examined the horses and their findings are also included in the prosecution summary. The Board accepts their findings and conclusions as to the condition of the horses at the time and also the opinion of Dr Stewart referred to earlier.
27. The facts in this matter reveal a lack of adequate nutritional care for the horses at the time of the RSPCA first inspection and a lack of proper nutritional care continuing during subsequent investigations. The follow up investigations revealed a lack of remedial action. Reasonable care and sufficient nutrition was not provided by Mr Thompson to horses of which he was in charge, resulting in deterioration in the condition of the horses as evidenced by the photographs of the horses at the time of their removal.
28. The apparent failure by Mr Thompson to provide reasonable care and attention to the welfare of the horses, amounted to an act of cruelty and a very serious breach of the responsibility of Mr Thompson to the horses in his charge, contrary to the provisions of AR 175.
29. In those circumstances, the Board finds that by his conduct, Mr Thompson has breached both AR 175(o)(i) and (iii) and consequently, that both charge one and charge two are made out.

Was Mr Thompson's conduct prejudicial to the image or interests or welfare of racing?

30. The remaining question is whether Mr Thompson's conduct was prejudicial to the image or interests or welfare of racing.
31. Adopting the principles endorsed by Young CJ in *Waterhouse v Racing Appeals Tribunal* [2002] NSW SC 1143, in order for the Board to be satisfied that Mr Thompson's conduct was prejudicial to the image or interests or welfare of racing, there must be an element of public knowledge of the conduct, a tendency in the conduct to prejudice racing generally as distinct from Mr Thompson's own reputation and also the conduct must be capable of being labeled as blameworthy.
32. In relation to those matters, the Board notes the following:
- (a) Mr Thompson is a licensed horse trainer, and horses subject to his care were neglected;
 - (b) those horses had been bred for racing purposes;
 - (c) while this incident did not attract widespread media coverage, nevertheless it is accepted by Mr Thompson that it is known within the Kilmore district, where Mr Thompson as the President of the Kilmore Trainers Association has a prominent role.
33. For those reasons, the Board concludes that the conduct is prejudicial to the image of racing. Further and significantly, neglecting the horses to the extent that occurred here, ultimately requiring their removal by the RSPCA, is conduct prejudicial to the interests and welfare of racing, particularly where (as here) the horses involved are retired from racing or otherwise unsuitable for racing and the person involved is a licensed trainer.
34. In the Board's view, the charge pursuant to AR 175A is made out.

Penalty

35. On the question of penalty the Board takes into account a number of considerations:
- (a) Mr Thompson is a trainer of long standing with no prior offences;
 - (b) as a result of the RSPCA prosecution, he has incurred a substantial fine and an order to pay a large amount of costs. These sums are currently being paid by instalments;

- (c) at present Mr Thompson has two horses in training, with some others about to be brought into training;
 - (d) Mr Thompson does not employ staff in his training activity;
 - (e) horse training is not Mr Thompson's full time occupation, as he is also the licensee of a Kilmore hotel; and
 - (f) there is no suggestion that any other horses under Mr Thompson's care have been neglected in any way.
36. Other relevant considerations include the seriousness of the offending and the need for specific and general deterrence.
37. One factor which the Board considers to be important is Mr Thompson's apparent lack of remorse. Significantly, during this proceeding, Mr Thompson sought to distance himself from his responsibilities by blaming others for his misfortune. In the Board's view, this indicated a concerning lack of insight by Mr Thompson into his responsibilities as a licensed trainer and the seriousness of his conduct.
38. Taking all of these matters into account, the decision of the Board is that Mr Thompson be disqualified for a period of one year on each of the three charges, all periods to be served concurrently - a total period of disqualification of one year, commencing midnight 30 September 2014.