

HEARING RESULT

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FROM: Registrar – Racing Appeals and Disciplinary Board

DATE: 28 March 2014

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

Panel Judge Russell Lewis (Chair), Mr Brian Forrest (Deputy), Mr Jeremy Rosenthal.

Appearances Mr Patrick Wheelahan appeared as Counsel for Ms Thompson.
Mr Anthony Burns, instructed by Mr James Ogilvy, appeared as Counsel for the Stewards.

Charge 1 Breach of AR 175(h)(ii)

The Committee of any Club or the Stewards may penalise: Any person who administers, or causes to be administered, to a horse any prohibited substance which is detected in any sample taken from such horse prior to or following the running of any race.

Charge 2 Breach of AR 178 (alternative to Charge 1)

When any horse that has been brought to a racecourse for the purpose of engaging in a race and a prohibited substance is detected in any sample taken from it prior to or following its running in any race, the trainer and any other person who was in charge of such horse at any relevant time may be penalised.

Charge 3 Breach of AR 178F

(1) A trainer must keep, and retain for a period of twelve months, a record of any treatment administered to any horse in his care.

Charges 1 & 2 relate to a prohibited substance, being alkalising agents as evidenced by total carbon dioxide (TCO₂) at a concentration in excess of 36.0 millimoles per litre in plasma, which was detected in a pre-race blood sample taken from the horse *Tahula* which finished fourth in Race 1 the *D&M Stockfeeds Maiden Plate* (1980m) at Tatura on Sunday, 8 December 2013.

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

Decision

Charge 1 – the Board finds the charge proved. Ms Thompson convicted and suspended for a period of 3 months, commencing Wednesday 2 April 2014.

Charge 2 (alternative to Charge 1) – not applicable.

Charge 3 – Ms Thompson convicted and fined \$250, due on or before 30 April 2014.

Pursuant to AR 177, *Tahula* disqualified as fourth place-getter in Race 1 the *D&M Stockfeeds Maiden Plate* (1980m) at Tatura on Sunday, 8 December 2013 and the places amended as follows:

4th – *Cotton Delight*, 5th – *Lord Blevic*.

Georgie Gavin
Registrar - Racing Appeals and Disciplinary Board

**TRANSCRIPT OF
PROCEEDINGS**

RACING APPEALS AND DISCIPLINARY BOARD

**HIS HONOUR JUDGE R.P.L. LEWIS, Chairman
MR B. FORREST, Deputy Chairman
MR J. ROSENTHAL**

EXTRACT OF PROCEEDINGS

DECISION

TRAINER: JODY THOMPSON

MELBOURNE

FRIDAY, 28 MARCH 2014

MR A.G. BURNS appeared on behalf of the RVL Stewards

MR P. WHEELAHAN appeared on behalf of Ms J. Thompson

CHAIRMAN: Miss Jody Thompson has been charged with having committed three offences under the Australian Rules of Racing. Charge 1, to which she has pleaded not guilty, is laid under Australian Rule 175(h)(ii). In substance, the charge alleges that on race day, she administered or caused to be administered to a horse trained by her a prohibited substance.

Charge 2 to which she has pleaded guilty is laid under Australian Rule 178 and is an alternative to Charge 1. It alleges that she was the trainer of a horse which was engaged to run and did run in a race with a prohibited substance in its system.

Charge 3, to which she has pleaded guilty, is laid under Australian Rule 178(f). It alleges that she failed to make, keep and retain for 12 months a record of treatment relating to the horse.

In relation to Charge 1, the onus is upon the Stewards to prove their case to the Briginshaw standard. That is, the Board, in order to convict, must be comfortably satisfied in all the circumstances that the charge has been proved. This requires the Board inter alia to consider the seriousness of the allegation made, the inherent likelihood of the occurrence and the gravity of the consequences flowing from a particular finding.

The Stewards' Case

In relation to Charge 1, the Stewards' case is that on the morning of 8 December, Miss Thompson or caused to be administered alkalinising agents to Tahula. Although the Stewards are not required to prove what the agents were, nor the route of administration, they allege that it was highly likely that the horse was stomach tubed with bicarbonate.

The Stewards, represented by Mr Tony Burns, rely, amongst other things, on the following: (1) the results of analyses by Racing Analytical Services Ltd, hereinafter known as "RASL", and the Racing Science Centre of Queensland, hereinafter known as "RSC"; (2), the results of analyses of a blood sample taken on 11 December 2013 which showed a TCO₂ concentration of 31.8 millimoles per litre in plasma; (3) the opportunity which existed for administration; (4) the opinion of Dr Brian Stewart as expressed in his statement; see tab 2B, page 10.

Thus, the Stewards rely on a combination of established facts and facts from which reasonable inferences may be drawn. Facts from which an inference may be drawn must be proved to the Briginshaw standard.

The Defence

Miss Thompson, who was represented by Mr Patrick Wheelahan, denies the allegations. In particular, she denies that she administered the prohibited substance or that anyone with her knowledge or acquiescence administered the prohibited substance. She accepts that there was a prohibited substance in the

horse's system as a result of human intervention. However, it is asserted on her behalf that she is an honest and credible witness and there is no evidence, direct or circumstantial, which would entitle the Board to be satisfied to the requisite degree that the charge has been proved.

The Facts

On 8 December 13, the horse, Tahula, trained by Miss Jody Thompson, ran in a maiden race at Tatura. Prior to the running of the race, a blood sample was taken from the horse at 1.12 pm. The race was due to run at 1.45 pm. The sample was analysed by RASL. The sample was shown to contain total carbon dioxide, TCO₂, at a concentration of 37.7 millimoles per litre in plasma. The referee sample was analysed by RSC and the TCO₂ reading was 36.9.

Under Australian Rule of Racing, Rule 178C(1)(a), alkalinising agents, when evidenced by total carbon dioxide at a concentration in excess of 36 millimoles per litre in plasma, are a prohibited substance. The measurement of uncertainty for TCO₂ determination at the threshold concentration of 36 millimoles per litre is plus or minus 1.0. Accordingly, the RASL finding was .7 above the threshold and the RSC finding was .1 under the threshold.

Returning now to the events of 8 December: Miss Thompson and her son, Ashley, who was not called to give evidence, arrived at her stables at approximately 7 am. She fed and watered the horse and put him in a yard. She and her son then left the stables about 9.30 am. During that period of approximately two and a half hours, they were the only persons at the stables.

Miss Thompson then returned to the stables between 10.20 and 10.30 am in order to ready the horse for the races. The float left her stables some time after 11 am. The race was due to start at 1.45 pm. In the meantime, Mr Norm Thompson had arrived at the stables at approximately 9.30 and he noted that Mr Pat Carrafa, a family friend and part-time farrier, was present. Others, who may be described as friends, also attended that morning, including Mr Mifsud and Mr Ewert.

In her interview with Stewards on 11 December 2013 at 10.10 am at her stables, Miss Thompson denied that she ever fed bicarbonate, saying that Salkavite was the only alkalinising agent she ever gave to the horse. He had been given Salkavite in his morning feed as well as the night before. She admitted having some stomach-tubing equipment in a shed at her residence but she had never used it. She had never stomach tubed a horse, nor had her son, Ashley. Further, she said that her father, Norm Thompson, had never stomach tubed a horse.

Norm Thompson, who had trained Tahula prior to his daughter taking over the training in November 2013, told Stewards that he was capable of stomach tubing and confirmed this evidence before the Board. He added, however, that he had tried to stomach tube Tahula on one occasion - he told the Stewards two - but was unable to do so because the horse resented the procedure.

Following the interview with Miss Thompson, a resting sample was taken from

the horse. Upon analysis, the TCO₂ concentration was 31.8 millimoles per litre in plasma.

Norm Thompson was interviewed and vehemently denied giving the horse alkalinising agents on race day. The Stewards also interviewed Patrick Mifsud, Peter Ewert and Pasquale Carrafa, all of whom had arrived at the stables. All denied having any knowledge or any involvement in administering any substance to the horse. Ashley Thompson was interviewed and he denied any knowledge of administration. He said that he could not stomach tube a horse, nor could his mother, and he thought that his grandfather, Norm, could not do it. Ashley's evidence was contrary to that of his mother when he said there was no tubing equipment where he and she lived.

Conclusions

The Board is not required to establish what the substance was or by what route it was administered or by whom. The resting level of 31.8 three days after 8 December demonstrates that the horse was a normal healthy horse. Based on Dr Stewart's evidence, which the Board accepts, the results of the analysis show that to achieve levels recorded on analysis, a large dose of alkalinising agent must have been administered on the morning of 8 December. The Board has concluded that it was inherently unlikely that any administration occurred prior to 7 am for the following reasons: (1) the fact that the stables were left unlocked and lacked any form of security strongly suggests that Miss Thompson was not concerned about the prospect of sabotage; (2) the unlikelihood of a person or persons arriving in the early hours of the morning

and attempting to administer and succeeding in administering a large amount of alkalinising agents to the horse, either orally or by stomach tubing; (3) the inherent unlikelihood of a person or persons (a) identifying Tahula as a horse to race that day; (b) administering alkalinising agents to Tahula, a 45-start nine-year-old maiden performer and (c) administering alkalinising agents with the intention of sabotage when it could not be known to such person or persons that the horse would be blood sampled.

The Board is satisfied that the administration occurred after 7 am on race day, more particularly in the period between 7 am and approximately 11 am when the horse left for the races.

Miss Thompson was present at the stables, save for the period 9.30 to 10.20 or 10.30. Mr Norm Thompson was present from approximately 9.30 for approximately half an hour and others, including Ashley Thompson, Carrafa, Mifsud and Ewert, were present for some or most of the period between 9.30 and 11 am.

Since the Board is satisfied that no administration occurred before 7 am and there being no challenge to Dr Stewart's opinion, the Board is satisfied that the horse was stomach tubed between 7 am and 11 am by one or more of the persons who attended the stable in that period.

Miss Thompson denies all knowledge of administration of alkalinising agents

on race day. The Board is of the opinion that her evidence was self serving and false. In the Board's opinion, Miss Thompson prevaricated and was evasive in her interviews by the Stewards and when giving evidence before this Board. In all the circumstances, the Board is satisfied that Ms Thompson must have known that an alkalinising agent was to be administered to the horse on race morning, regardless of whether or not she physically participated in the administration. Accordingly, the Board finds Charge 1 to be proved.

In this case, Ms Thompson has no prior convictions and the Board accepts that her financial situation is parlous. She fortunately has other avenues open to her and has a capacity to earn income. The principle of general deterrence is an important principle in this case, as is the damage to the image of racing.

Miss Thompson gains no credit for any plea of guilty insofar as Charge 1 is concerned because she has consistently denied that she was ever involved in the administration or causing administration.

In all the circumstances, the Board feels that a period of suspension is warranted. Taking all matters into account, the Board agrees with the submission of Mr Wheelahan that a period of suspension of three months, to be served immediately, is the appropriate disposition in relation to Charge 1.

In relation to Charge 3, it is of importance that trainers maintain accurate and

up-to-date records of treatment and the like. A fine is the appropriate disposition for this type of offence, but having regard to Ms Thompson's financial situation, the Board is prepared to be lenient in that regard and she is fined the sum of \$250, to be paid on or before 30 April 2014.
