



DECISION ON PENALTY

RACING VICTORIA STEWARDS

and

**ROBERT SMERDON, GREGORY NELLIGAN, DENISE NELLIGAN, LIAM BIRCHLEY,
TONY VASIL, STUART WEBB, DANIEL GARLAND & TRENT PENNUTO**

Date of Hearing 30 April 2018, 1 and 3 May 2018

Date of Decision 8 May 2018

Date of Penalty 10 May 2018 and 25 May 2018

Panel Judge J Bowman (Chair), Mr B Forrest (Deputy Chair) and
Mr G Ellis (Member)

Appearances Mr J Gleeson QC, with Mr D Bennett (instructed by Minter
Ellison) appeared on behalf of the RVL Stewards

Mr T McHenry appeared on behalf of Mr R. Smerdon, Mr S Webb
and Mr D Garland

Mr P. Wheelahan (instructed by Tony Hannebery Lawyers)
appeared for Mr A. Vasil

Mr G Croxford appeared for Mr T Pennuto

Mr M Grant-Taylor QC (instructed by Travis Schultz Law)
appeared for Mr L Birchley

Robert Smerdon

Charge One: AR 175(a)

*AR 175 The Principal Racing Authority (or the Stewards
exercising powers delegated to them) may penalise:*

*(a) Any person who, in their opinion, has been guilty of any
dishonest, corrupt or fraudulent, improper or dishonourable
action or practice in connection with racing.*

On 115 occasions during the period from 26 June 2010 to 7
October 2017, Mr Smerdon engaged in a practice that was
dishonest, corrupt or fraudulent, improper or dishonourable, in
that he was a party to the administration of alkalinising agents
and/or medications to a horse or horses on a race day.

Charge Two: AR 178E(1)

... [N]o person without the permission of the Stewards may ... cause to be administered any medication to a horse on race day prior to such horse running in a race.

On 8 October 2010, Mr Smerdon instructed Mr Nelligan to administer Vicks to the nose of *Disco Dan* after saddling that gelding prior to running in Race 8 at Bendigo.

Plea Charge 1 - Not Guilty
Charge 2 - Not Guilty

Decision **Charge 1** - The Board finds the charge proved.
Mr Smerdon is (a) disqualified for life; and (b) fined \$90,000.

Charge 2 - The Board finds the charge proved.
Mr Smerdon is disqualified for a period of six months to be served concurrently with the penalty pursuant to AR 175(a).

Gregory Nelligan

Charge One: AR 175(a)

AR 175 The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:

(a) Any person who, in their opinion, has been guilty of any dishonest, corrupt or fraudulent, improper or dishonourable action or practice in connection with racing.

On 123 occasions during the period from 26 June 2010 to 7 October 2017, Mr Nelligan engaged in a practice that was dishonest, corrupt or fraudulent, improper or dishonourable, in that he administered alkalinising agents and/or medications, and/or he was a party to the administration of alkalinising agents and/or medications to a horse or horses on a race day.

Charge Two: AR 178A(1)(a) [Alternative to Charge 1]

AR 178A(1) No, person, unless he has first obtained the written permission of the Stewards, shall have in his possession on a racecourse where a race meeting is being conducted or in any motor vehicle, horse float or other mode of transport used for the purpose of conveying a horse or horses to and/or from a race meeting any prohibited substance or a syringe, needle, nasogastric tube or other instrument that could be used:

(a) to administer a prohibited substance to a horse[.]

At the Flemington racecourse on 7 October 2017, Mr Nelligan was in possession of an instrument that could be used to administer a prohibited substance to a horse, namely a modified syringe.

Charge Three: AR 178AA – Lovani [Alternative to Charge 1]

178AA (1) A person must not administer an alkalinising agent, in any manner, to a horse which is engaged to run in any race ...:

(a) at any time on the day of the scheduled race ... and prior to the start of such event; ...

(2) Any person who:

(a) administers any alkalinising agent; [and/or]

(b) attempts to administer an alkalinising agent ...

contrary to AR 1788A(1) commits an offence and may be penalised.

On 7 October 2017 at or about 3:08pm, Mr Nelligan administered, alternatively attempted to administer, sodium bicarbonate, an alkalinising agent, to *Lovani* which was scheduled to run in Race 9, the Paris Lane Handicap, at 5:45pm at Flemington racecourse.

Charge Four: AR 178E(1) – Lovani [Alternative to Charge 1 and 3]

178E(1) ... [N]o person without the permission of the Stewards may administer ... any medication to a horse on race day prior to such horse running in a race.

On 7 October 2017 at or about 3:08pm, Mr Nelligan administered, alternatively attempted to administer, sodium bicarbonate and Tripart, both of which are medications, to *Lovani* which was scheduled to run in Race 9, the Paris Lane Handicap, at 5:45pm at Flemington racecourse.

Charge Five: AR 175B(2) – Darney Gub

175B(2) Any person employed by a trainer in connection with the training or care of racehorses must not lay a horse under the control of the trainer for whom he is or was employed, while so employed ...

On 9 March 2015, Mr Nelligan, who was at all relevant times employed as a stablehand by Mr Robert Smerdon, a licensed trainer, bet \$100 on *Darney Gub* in Race 6 at Moonee Valley to lose that race.

Charge Six: AR 175B(2) – Reldas

175B(2) Any person employed by a trainer in connection with the training or care of racehorses must not lay a horse under the control of the trainer for whom he is or was employed, while so employed ...

On 27 March 2015, Mr Nelligan, who was at all relevant times employed as a stablehand by Mr Robert Smerdon, a licensed trainer, bet \$100 on *Reldas* in Race 2 at Moonee Valley to lose that race.

Charge Seven: AR 175B(2) – *The Bowler*

175B(2) Any person employed by a trainer in connection with the training or care of racehorses must not lay a horse under the control of the trainer for whom he is or was employed, while so employed ...

On 11 April 2015, Mr Nelligan, who was at all relevant times employed as a stablehand by Mr Robert Smerdon, a licensed trainer, bet \$330 on *The Bowler* in Race 8 at Flemington to lose that race.

Charge Eight: AR 178E(1)

AR 178E(1) ... [N]o person without the permission of the Stewards may ... cause to be administered any medication to a horse on race day prior to such horse running in a race.

On 8 October 2010, Mr Nelligan administered Vicks to the nose of *Disco Dan* after saddling that gelding prior to running in Race 8 at Bendigo.

Charge Nine: AR 175(p)

AR 175 The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:
...

(p) Any person who fails to comply with any order, direction or requirement of the Stewards or any official.

On 31 October 2017, during an inquiry, Mr Nelligan refused and failed to comply with the direction of the Stewards, directing him to produce his mobile telephone for the purpose of facilitating the imaging of his telephone.

Charge Ten: AR 175(f)

AR 175 The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:
...

(f) Any person who refuses or fails to attend or give evidence at any investigation, inquiry or appeal when directed or requested by the Principal Racing Authority, or other person authorised by the Principal Racing Authority, to do so.

On 31 October 2017, during an inquiry, Mr Nelligan refused and failed to give evidence in relation to the on-course race day treatment of Lovani at Flemington on 7 October 2017.

Plea

Charge 1 - No plea entered (treated as not guilty)
Charges 2 - No plea entered (treated as not guilty)
Charges 5 to 7 - No plea entered (treated as not guilty)
Charge 8 - No plea entered (treated as not guilty)
Charges 9 - No plea entered (treated as not guilty)
Charge 10 - No plea entered (treated as not guilty)

Decision

Charge 1 - The Board finds the charge proved.
Mr Nelligan is disqualified for life.

As Charge 1 is proved Charges 2 - 4 (alternatives to Charge 1) fall away.

Charges 5 to 7 - The Board finds the charges proved.
Mr Nelligan is convicted and disqualified for a period of six months on each charge, a total of 18 months to be served concurrently with the principal sentence.

Charge 8 - The Board finds the charge proved.
Mr Nelligan is convicted and disqualified for a period of six months to be served concurrently with the principal sentence.

Charge 9 - The Board finds the charge proved.
Mr Nelligan is convicted and disqualified for a period of six months to be served concurrently with the principal sentence.

Charge 10 - The Board finds the charge proved.
Mr Nelligan is convicted and disqualified for a period of six months to be served concurrently with the principal sentence.

Denise Nelligan

Charge One: AR 175(a)

AR 175 The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:

(b) Any person who, in their opinion, has been guilty of any dishonest, corrupt or fraudulent, improper or dishonourable action or practice in connection with racing.

On 13 occasions during the period from 24 February 2011 to 25 February 2017 Mrs Nelligan engaged in a practice that was dishonest, corrupt or fraudulent, improper or dishonourable, in that she was a party to the administration of alkalising agents and/or medications to a horse or horses on a race day.

Plea

Charge 1 - No plea entered (treated as not guilty)

Decision

Charge 1 - The Board finds the charge proved.
Mrs Nelligan is disqualified for life.

Liam Birchley

Charge One: AR 175(a)

AR 175 The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:

(a) Any person who, in their opinion, has been guilty of any dishonest, corrupt or fraudulent, improper or dishonourable action or practice in connection with racing.

On three occasions, on 3 November 2011, 6 November 2012 and 3 November 2015, Mr Birchley engaged in a practice that was dishonest, corrupt or fraudulent, improper or dishonourable, in that he was a party to the administration of alkalising agents and/or medications to a horse or horses on a race day.

Plea Charge 1 - Not Guilty

Decision Charge 1 - The Board finds the charge proved. Mr Birchley is disqualified for one year. The commencement date of the disqualification is subject to submissions from the parties.

Pursuant to AR 196(6)(b) Mr Birchley must not start a horse in any race from the date of the Board's decision, 10 May 2018, until the expiration of the period of disqualification.

Tony Vasil

Charge One: AR 175(a)

AR 175 The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:

(a) Any person who, in their opinion, has been guilty of any dishonest, corrupt or fraudulent, improper or dishonourable action or practice in connection with racing.

On seven occasions during the period from 26 December 2010 to 7 June 2013, Mr Vasil engaged in a practice that was dishonest, corrupt or fraudulent, improper or dishonourable, in that he was a party to the administration of alkalising agents and/or medications to a horse or horses on a race day.

Plea Charge 1 - Not Guilty

Decision Charge 1 - The Board finds the charge proved. Mr Vasil is disqualified for three years. The commencement date of the disqualification is subject to submissions from the parties.

Pursuant to AR 196(6)(b) Mr Vasil must not start a horse in any race from the date of the Board's decision, 10 May 2018, until the expiration of the period of disqualification.

Stuart Webb

Charge One: AR 175(a)

AR 175 The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:

(a) Any person who, in their opinion, has been guilty of any dishonest, corrupt or fraudulent, improper or dishonourable action or practice in connection with racing.

On three occasions, on 15 August 2010, 26 December 2010 and 28 April 2017, Mr Webb engaged in a practice that was dishonest, corrupt or fraudulent, improper or dishonourable, in that he was a party to the administration of alkalising agents and/or medications to a horse or horses on a race day.

Plea Charge 1 - Not Guilty

Decision Charge 1 - The Board finds the charge proved. Mr Webb is disqualified for four years. The commencement date of the disqualification is 15 January 2018.

Pursuant to AR 196(6)(b) Mr Webb must not start a horse in any race from the date of the Board's decision, 10 May 2018, until the expiration of the period of disqualification.

Daniel Garland

Charge One: AR 175(a)

AR 175 The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:

(a) Any person who, in their opinion, has been guilty of any dishonest, corrupt or fraudulent, improper or dishonourable action or practice in connection with racing.

On two occasions, on 3 November 2011 and 25 May 2013, Mr Garland engaged in a practice that was dishonest, corrupt or fraudulent, improper or dishonourable, in that he was a party to the administration of alkalising agents and/or medications to a horse or horses on a race day.

Plea Charge 1 - Not Guilty

Decision Charge 1 - The Board finds the charge proved. Mr Garland is disqualified for one year. The commencement date of the disqualification is 15 January 2018.

Trent Pennuto

Charge One: AR 175(a)

AR 175 The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:

(a) Any person who, in their opinion, has been guilty of any dishonest, corrupt or fraudulent, improper or dishonourable action or practice in connection with racing.

On four occasions during the period from 22 August 2010 to 9 December 2011, Mr Pennuto engaged in a practice that was dishonest, corrupt or fraudulent, improper or dishonourable, in that he was a party to the administration of alkalising agents and/or medications to a horse or horses on a race day.

Plea

Charge 1 - Not Guilty

Decision

Charge 1 - The Board finds the charge proved. Mr Pennuto is disqualified for two years. The commencement date of the disqualification is 10 May 2018.

Pursuant to AR 196(6)(b) Mr Pennuto must not start a horse in any race from the date of the Board's decision, 10 May 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

*Mr Robert Smerdon, Mr Gregory Nelligan, Mrs Denise Nelligan, Mr Liam Birchley,
Mr Tony Vasil, Mr Stuart Webb, Mr Daniel Garland & Mr Trent Pennuto*

FURTHER DECISION

Judge Bowman	Chair
Mr B Forrest	Deputy Chair
Mr G Ellis	Member

Appearances

For the stewards

For Mr R Smerdon

For Mr G Nelligan and Mrs
D Nelligan

For Mr L Birchley

For Mr T Vasil

For Mr S Webb

For Mr D Garland

For Mr T Pennuto

Counsel

Mr J Gleeson QC
with Mr D Bennett

Mr M Grant-Taylor QC

Mr P Wheelahan

Solicitors

Minter Ellision

Mr T McHenry

No appearance

Mr T Schultz

Mr T Hannebery

Mr T McHenry

Mr T McHenry

Mr G Croxford

1. Commencement dates of disqualifications.

The disputed dates of commencement of disqualification periods for Messrs. Webb, Garland and Pennuto are now agreed to be as follows:-

5	Messrs. Webb and Garland	15 January 2018
	Mr. Pennuto	10 May 2018

2. Imposition of a fine on Mr.Smerdon

10 Having considered the written submissions, we are of the view that a fine should be imposed on Mr. Smerdon. We fix that fine in the sum of \$90,000. We appreciate that the maximum fine available pursuant to AR196(1) is \$100,000. We agree that Mr.Smerdon should not be seen as simply retiring and just "walking away", the message that he effectively passed on in a media interview well before the hearing of the Aquanita case had even commenced. Some additional and substantial penalty should be imposed.

15 Racing Victoria Stewards sought a fine of the maximum permissible amount of \$100,000. We agree that it should be a figure very close to the maximum, but we suppose that even more reprehensible conduct could be imagined or might arise. However, Mr.Smerdon's conduct must be at least close to deserving that maximum figure.

20 We have taken into account the material supplied by Mr.McHenry as to Mr. Smerdon's financial position. We have also borne in mind that the seeking of a fine, much less the maximum fine, apparently came somewhat "out of the blue" at the end of the submissions on behalf of the Stewards.

In all the circumstances, we are of the view that a fine of \$90,000 is appropriate and we order
25 payment of it. The stewards have indicated some preparedness to discuss terms of payment and we trust that these can be resolved.