7 October 2020

**DECISION**

**RACING VICTORIA**

**and**

**MR MARK SUES**

**Date of hearing:** 16 September 2020

**Panel:** Judge John Bowman (Chairperson), Magistrate John Doherty (Deputy Chairperson) and Dr June Smith.

**Appearances:** Ms Gayann Walker instructed by Mr Daniel Bolkunowicz appeared on behalf of the Stewards.

Mr Damian Sheales appeared on behalf of Mr Sues.

**Charges and particulars:** **Charge One: AR 231(1)(b)(iv)**

The Stewards charge you with breaching AR 231(1)(b)(iv) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

 *(iv) to provide proper and sufficient nutrition for the horse.*

**Particulars**

1. You are, and were at all relevant times, a trainer licensed with Racing Victoria.
2. On 1 July 2019, the horse *Remodel* was examined by a Racing Victoria veterinarian, and was found to be in a body condition score of less than 1 out of five.
3. Up to and including 1 July 2019, you were the person in charge of *Remodel* and had responsibility for its care.
4. *Remodel’s* body condition score on 1 July 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

**Charge Two (Alternative to Charge One): AR 231(1)(b)(iii)**

The Stewards charge you with breaching AR 231(1)(b)(iii) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*(iii) to provide veterinary treatment to a horse where such treatment is necessary for the horse.*

**Particulars**

1. You are, and were at all relevant times, a trainer licensed with Racing Victoria.
2. On 1 July 2019, the horse *Remodel* was examined by a Racing Victoria Veterinarian, and Inspector of the RSPCA and was found to be a body score of less than 1 out of 5.
3. Up to and including 1 July 2019, you were the person in charge of *Remodel* and had responsibility for its care.
4. *Remodel’s* body score on 1 July 2019 resulted from your failure to seek veterinary treatment for *Remodel* which was necessary to address the reason(s) for *Remodel’s* poor body condition, in the period you were responsible for its care.
5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

**Charge Three: AR 231(1)(b)(iv)**

The Stewards charge you with breaching AR 231(1)(b)(iv) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

 *(iv) to provide proper and sufficient nutrition for the horse.*

**Particulars**

1. You are, and were at all relevant times, a trainer licensed with Racing Victoria.

2. On 1 July 2019, the horse *Speech Therapy* was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.

3. Up to and including 1 July 2019, you were the person in charge of *Speech Therapy* and had responsibility for its care.

4*. Speech Therapy’s* body condition score on 1 July 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.

5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

**Charge Four (Alternative to Charge Three): AR 231(1)(b)(iii)**

The Stewards charge you with breaching AR 231(1)(b)(iii) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

*(iii) to provide veterinary treatment to a horse where such treatment is necessary for the horse.*

**Particulars**

1. You are, and were at all relevant times, a trainer licensed with Racing Victoria.

2. On 1 July 2019, the hors*e Speech Therapy* was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 2 out of 5.

3. Up to and including 1 July 2019, you were the person in charge of *Speech Therapy* and had responsibility for its care.

*4. Speech Therapy’s* body score on 1 July 2019 resulted from your failure to seek veterinary treatment for *Speech Therapy* which was necessary to address the reason(s) for *Speech Therapy’s* poor body condition in the period you were responsible for its care.

5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

**Charge Five: AR 231(1)(b)(iv)**

The Stewards charge you with breaching AR 231(1)(b)(iv) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

 *(iv) to provide proper and sufficient nutrition for the horse.*

**Particulars**

 1. You are, and were at all relevant times, a trainer licensed with Racing Victoria.

 2. On 1 July 2019, the unregistered 2 year old filly by *Excelebration/Lolini* was examined by a Racing Victoria Veterinarian and was found to be a body score of less than 1 out of 5.

 3. Up to and including 1 July 2019, you were the person in charge of *the Excelebration/Lolini filly* and had responsibility for its care.

4*. The Excelebration/Lolini filly’s* body condition score on 1 July 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.

5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

**Charge Six (Alternative to Charge Five): AR 231(1)(b)(iii)**

The Stewards charge you with breaching AR 231(1)(b)(iii) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

*(iii) to provide veterinary treatment to a horse where such treatment is necessary for the horse.*

**Particulars**

 1. You are, and were at all relevant times, a trainer licensed with Racing Victoria.

2. On 1 July 2019, the filly by *Excelebration/Lolini was examined by a* Racing Victoria Veterinarian and was found to be a body score of less than 1 out of 5.

3. Up to and including 1 July 2019, you were the person in charge of *the Excelebration/Lolini filly a*nd had responsibility for its care.

4. The *Excelebration/Lolini filly’s* body score on 1 July 2019 resulted from your failure to seek veterinary treatment for *the Excelebration/Lolini* filly which was necessary to address the reason(s) forthe *Excelebration/Lolini filly’s* poor body condition, in the period you were responsible for its care.

5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

**Charge Seven: AR 231(1)(b)(iii)**

The Stewards charge you with breaching AR 231(1)(b)(iii) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

*(iii) to provide veterinary treatment to a horse where such treatment is necessary for the horse.*

**Particulars**

 1. You are, and were at all relevant times, a trainer licensed with Racing Victoria.

 2. On 1 July 2019, filly by *Excelebration/Lolini* was examined by a Racing Victoria Veterinarian and was found to have severe exudative dermatitis.

 3. Up to and including 1 July 2019, you were the person in charge of *the Excelebration/Lolini filly* and had responsibility for its care.

4*.* While responsible for the *Excelebration/Lolini filly*, you failed to provide veterinary treatment to that horse which was necessary to address its severe exudative dermatitis.

5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

**Charge Eight: AR 231(1)(b)(iv)**

The Stewards charge you with breaching AR 231(1)(b)(iv) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

 *(iv) to provide proper and sufficient nutrition for the horse.*

**Particulars**

 1. You are, and were at all relevant times, a trainer licensed with Racing Victoria.

 2. On 26 November 2019, the horse *All In Sync* was examined by a Racing Victoria Veterinarian and was found to be a body condition score of less than 2 out of 5.

 3. Up to and including 26 November 2019, you were the person in charge of *All In Sync* and had responsibility for its care.

4*. All In Sync’s* body condition score on 26 November 2019 resulted from your failure to provide proper and sufficient nutrition in the period you were responsible for its care.

5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iv).

**Charge Nine (Alternative to Charge Eight): AR 231(1)(b)(iii)**

The Stewards charge you with breaching AR 231(1)(b)(iii) which reads as follows:

*AR 231(1) A person must not*

*…*

*(b) if the person is in charge of a horse - fail at any time:*

*…*

*(iii) to provide veterinary treatment to a horse where such treatment is necessary for the horse.*

**Particulars**

1. You are, and were at all relevant times, a trainer licensed with Racing Victoria.

2. On 26 November 2019, the hors*e All In Sync* was examined by a Racing Victoria Veterinarian and was found to be a body condition score of less than 2 out of 5.

3. Up to and including 26 November 2019, you were the person in charge of *All In Sync* and had responsibility for its care.

4*. All In Sync’s* body score on 26 November 2019 resulted from your failure to seek veterinary treatment for *All In Sync* which was necessary to address the reason(s) for *All In Sync’s* poor body condition, in the period you were responsible for its care.

5. Your conduct, as set out above, was in contravention of AR 231(1)(b)(iii).

**Pleas:** Guilty to charges 2, 4 and 6.

Charges 1,3,5,8 and 9 were withdrawn and charge 7 merged with charge 6.

**DECISION**

Mr Mark Sues, you have pleaded ‘guilty’ to three breaches of AR231(1)(b)(iii). Each involves a failure to seek veterinary treatment. One charge involves the horse *Remodel*, a 12 year old gelding. One concerns *Speech* *Therapy*, a 6 year old retired mare. The third involves a 3 year old filly by *Excelebration* out of *Lolina*. You are a licensed trainer and the three horses were on your property at Somerville.

You were interviewed by Stewards on 1 July 2019 at your property and again over the telephone on 3 December 2019. When the Stewards visited your property, they were accompanied by veterinary surgeon, Dr Chris Heislers, and Equine Welfare Manager, Ms Jennifer Hughes.

Dr Heislers inspected the three horses in question and assessed their body scores, these being contained in a subsequent report. He also reported generally upon their condition and made available photographs taken of them.

In relation to the filly *Excelebration* filly, he described her as being in very poor condition, with a body score in the 0 – 0.5 range. He also noted severe exudative dermatitis on her back and with no evidence of treatment for it. *Remodel* also had very poor body condition, with a body score of 0.5. *Speech Therapy* was in poor body condition with a body score of 1.5. Body scores below 2 out of 5 are considered to be unacceptable.

We might add that the photographs of the *Excelebration* filly certainly demonstrates a horse in very poor condition indeed.

Your explanation for the condition of the horses varied from horse to horse. You claimed that the filly came to you approximately three months before the Stewards’ inspection. You had treated her with Panacur for redworm twice.

However, there had been no veterinary input into her condition or the deterioration in her weight. A collar had been purchased in relation to her wind sucking. You also stated that she was in ‘pretty good’ condition when she arrived with you, but she dropped away.

In relation to *Remodel*, Dr Heislers informed you that the horse needed a fairly intensive feeding programme. *Speech Therapy* had been with you for approximately 10 to 12 weeks and had been skinny and ribby since arrival.

The overall picture is that these horses were each in need of veterinary treatment and had been for some months. You failed to have them treated and, as said, plead guilty to the charges.

Your background is that you are a licenced trainer with approximately 23 horses on your property, 14 of which are retired. You have 9 racehorses, 6 of which are in work. You have taken several horses which may otherwise have been destined for the knackery, and that is clearly to your credit. The horses represent a loss to you, but you have another occupation, not related to horses, and that in the source of your income.

You do not have a completely clear record, with prior offences involving failing to report an injury in 2011 and striking a horse in 2019. On each occasion, you were fined the sum of $1,000.

In cases such as the present, there is the need for both specific and general deterrence. The welfare of horses and the public perception of it, as well with the attention of the media, are very important considerations.

Mr Sheales, on your behalf, stated that suspension of your licence was inappropriate, but such suspension should in turn be wholly suspended. He referred to the decision of this Tribunal in the matter of Mr Andrew Anderson (25 October 2019). There are some parallels to that decision, but there are also some differences. As was said in that decision, Mr Henderson, a licensed stablehand and track rider, was effectively prevailed upon or volunteered to put homeless racehorses near the end of their careers on the property where he lived with his parents. This was during a drought. He pleaded guilty and co-operated with Stewards from the outset. Excellent references from a large number of racing identities and a report from a psychologist were put before the Tribunal. The Tribunal accepted that Mr Henderson was focused on animal welfare, but bit off more than he could chew when trying to save horses during a drought. The Tribunal also noted Mr Henderson’s apology and remorse. Mr Henderson was disqualified from owning racehorses or having them on his property. His licence was suspended for 12 months, and that suspension was in turn suspended for 2 years. In so doing, the Tribunal referred to the almost unique circumstances of the case.

In the present case, we have taken into account your pleas of guilty.

On penalty we shall treat the three charges collectively and impose an aggregate penalty. The breaches are of varying severity, with the failure to obtain veterinary treatment to the three year old filly probably being the most serious, not that the other two charges are not also reprehensible.

The penalty we have arrived at is that sought by the Stewards, namely suspension of your trainers licence for a period of 12 months, with 9 months of that in turn suspended for that period. The effect is immediate suspension of your trainers licence for 3 months, with a further 9 months suspension hanging over you for 12 months.

Mark Howard
Registrar, Victorian Racing Tribunal