10 September 2024

**DECISION**

**RACING VICTORIA**

**and**

**RODNEY MAHER**

**Dates of hearings:** 29 May 2023, 30 May 2023, 24 November 2023 and 24 June 2024.

**Date of decision:** 6 September 2024

**Panel:** Judge Kathryn Kings (Deputy Chairperson), Judge Marilyn Harbison (Deputy Chairperson) and Mr Des Gleeson.

**Appearances:** Mr Scott Hunter appeared on behalf of the Stewards.

Mr Zero Partos, instructed by Mr Frank Vinci appeared on behalf of Mr Rodney Maher.

**Charges and particulars:**

**Brief 1**

**Charge One: AR 231(1)(b)(ii)**

AR 231(1)(b)(ii) reads as follows:

*AR 231 Care and welfare of horses*

*(1) A person must not:*

*…*

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

*…*

(ii) to take such reasonable steps as are necessary to alleviate any pain inflicted upon or being suffered by the horse;

**Particulars**

1. You are, and were at all relevant times, an Owner registered with Racing Victoria.
2. You were, at all relevant times, the person in charge of a registered thoroughbred known as ‘*Brugia*’ (the Horse).
3. On 2 March 2022, the Horse was examined by a Racing Victoria veterinarian at your property at 1750 Cape Otway Road, Wurdibuloc, where the Horse was found to be distressed and in pain, in poor body condition (1 out of 5), and displaying clinical signs typical of laminitis.
4. Between approximately 24 December 2021 and 2 March 2022, you failed to take such reasonable steps as were necessary to alleviate pain being suffered by the Horse.

**Brief 2**

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

AR 231(1)(b)(iii) reads as follows:

*AR 231 Care and welfare of horses*

*(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 the horse where such treatment is necessary for the horse;*

**Particulars**

1. You are, and were at all relevant times, an owner registered with Racing Victoria.
2. You were, at all relevant times, the person in charge of the horse, Sneaky Princess (the Horse).
3. On 30 August 2021, the Horse was examined by a Racing Victoria veterinarian at your property at 1750 Cape Otway Road, Wurdibolic, where the Horse was found to have a chronic granulating wound on its right hind leg which required immediate veterinary treatment.
4. Between 23 August 2021 and 30 August 2021, you failed to provide veterinary treatment to the Horse where such treatment was necessary.

**Charge Two: AR 232(b)**

AR 232(b) reads as follows:

*AR 232 Failure to observe processes and directions of PRAs or Stewards*

*A person must not:*

*…*

*(b) fail or refuse to comply with an order, direction or requirement of the Stewards or an official;*

*…*

**Particulars**

1. You are, and were at all relevant times, an owner registered with Racing Victoria.
2. On 20 September 2021, you were directed by an Equine Welfare Officer at Racing Victoria to provide, by 5:00 pm on 1 October 2021, the following (the First Direction):
	1. Photographs of Apache Cove from when he returned from NSW to Victoria in 2021;
	2. Copies of invoices or receipts for feed purchased (including hard feed and hay) between 1 May 2021 and 30 August 2021;
	3. Copies of invoices or receipts for worming treatments purchased between 1 May 2021 and 30 August 2021; and
	4. Any other documents you believed might be of assistance.
3. On 8 October 2021, you were granted an extension of time to comply with the First Direction, (having on 5 October 2021 only provided Item A – a photograph of Apache Cove) and issued with a further direction to provide, by 5:00 pm on 15 October 2021, the following (the Second Direction):
4. Copies of invoices or receipts for feed purchased (including hard feed and hay) between 1 May 2021 and 30 August 2021;
5. Copies of invoices or receipts for worming treatments purchased between 1 May 2021 and 30 August 2021; and
6. A veterinary report from your veterinarian, Dr James Vanner, concerning the 2014 Delago Deluxe X Betrille Mare.
7. Your conduct, in failing to provide the documents the subject of the Second Direction, was in contravention of AR 232(b).

**Pleas:** Not Guilty to all charges.

**DECISION**

This is the Tribunal‘s decision on penalty in relation to Racing Victoria’s proceeding against Mr Rodney Maher. It is our unanimous decision.

We would refer to our decision on 24 June 2024 on liability and the factual matters discussed and determined therein. In summary, in relation to the horse Brugia, Mr Maher was charged under AR 231(1)(b)(ii). The Charge is that between 24/12/21 -2/3/22, whilst being the person in charge of Brugia, he did fail to take reasonable and necessary steps to alleviate pain. The charge was proven.

In relation to the horse Sneaky Princess, Mr Maher was charged under AR 231(1)(b)(iii). The Charge is that between 23/8/21 – 30/8/21, whilst being the person in charge of Sneaky Princess, he did fail to provide necessary veterinary treatment to the horse for a chronic granulating wound. The charge was proven.

Further, in relation to Sneaky Princess, Mr Maher was charged under AR 232 with failing to comply with a direction to provide documentation to Stewards by 15/10/21. That charge was not proven.

It was accepted on behalf of Mr Maher that the two charges on which he has been found guilty are serious and that the Stewards’ submissions on penalty, in paragraphs 18 & 19, set out the relevant principles and penalty considerations.

**The relevant principles and penalty considerations.**

Animal welfare is of the upmost importance to the racing industry.

In Romeo v RVL (2021) VCAT 473, Senior Member Wentworth, in a review of penalty regarding an owner failing to provide necessary veterinary treatment, said:

“Misconduct in relation to the care and welfare of horses by licensed participants risks the reputation and standing of the industry and the social licence under which it operates.

Protecting the reputation of the industry and general deterrence (deterring others from engaging in similar conduct) are both important considerations here”.

In RVL v Liam (15/12/23) Chairperson, Judge Bowman expressed a similar view and said in relation to a nutrition and pain case:

“As this Tribunal has said repeatedly in earlier cases, the maintenance of proper animal welfare is of vital importance. Apart from its great importance in respect of the well-being of individual horses, the whole issue of animal welfare is one upon which considerable community attention is focused, and that is understandably so. These are matters which loom large in our thinking when dealing with such charges”.

We accept that animal welfare, general deterrence and the good name of the industry are important in the setting of penalties in serious matters.

In relation to Brugia, there were obvious signs of pain and distress upon examination on 2 March 2022 by Dr Smyth, a veterinarian employed by Racing Victoria. He was not able to diagnose the horse with laminitis, but said that the horse was suffering clinical signs of such a disease. The obvious distress, the poor body condition of 1/5, and its facial expression indicated pain. The horse could not access water independently. In estimating the time of onset of pain, Dr Smyth said that a lame horse has lost its ability to hide its distress. The Tribunal accepted Dr Smyth’s evidence that Brugia continued to experience lameness and loss of body condition for a significant period of at least two months. Despite the obvious signs of pain, the dramatic loss of body condition, even with increased feed, should have been obvious to Mr Maher before travelling interstate. Alternative treatment was required to relieve the horse of pain.

Brugia suffered pain and loss of condition for an extended period of time, which ultimately resulted in the horse being euthanised. We also take into consideration Mr Maher’s failure to seek veterinary treatment as a fundamental step to alleviate pain. He should have been prompted by the following events:

When pain was noticed as a result of the farrier treatment in December 2021;

When the weight loss, estimated as four body condition scores, or approximately 200kg, in the 3 to 4 months since the trimming of the feet, first became apparent;

At the time of the apparent abortion in January 2022; and

At the time of the mandible injury being noticed.

The Tribunal accepts the submission of the Stewards that the conduct in this matter represents a serious example of breach of the duty of care. The lameness and pain were allowed to continue despite the above-mentioned events. They should have resulted in more appropriate responses and the engagement of the services of a veterinarian to diagnose and provide appropriate treatment. Brugia was left in the care of a third party in this state while Mr Maher travelled interstate. Ultimately Brugia was euthanised on 1 March 2022.

In relation to the horse Sneaky Princess, she was identified with an obvious chronic granulating wound to her right hind cannon/fetlock area with lameness estimated at 4/5. The horse was in poor condition, with a body condition score of 1.5, a dull attitude and dry coat. The need for treatment to the wound was obvious.

The RVL veterinarian, Dr Corver, reported that Veterinarian consultation and treatment for the horse was required:

At the time the injury was sustained;

During the time the injury was healing;

For the right-hand lameness evident on the trot; and

For the poor body condition.

Dr Corver and Mr Maher’s veterinarian, Dr Vanner, both provided estimates relevant to the sustaining of the wound in question. Dr Vanner estimated “anywhere between a couple of weeks to longer” whilst Dr Corver seemed more conservative in estimating 7 to 14 days before his inspection.

Even after allowing a time in which Mr Maher was unaware of the injury, once he realised the horse had failed to appear for its feed there were further failures. Once the injury was identified there were further delays in cutting the fence to gain access to the horse. The Tribunal does not accept that the delay associated with the water canal, accessibility and his preference for veterinarians were reasonable. On his own evidence, there was considerable delay between first noticing the injury and the horse receiving appropriate veterinary treatment. The Tribunal accepts that the treatment provided was successful and that the wound healed. Sneaky Princess regained her body condition and her general wellbeing improved to a satisfactory level.

The Tribunal accepts that the injury suffered by Sneaky Princess was an accident. The Tribunal does not expect those in charge of horses to know their exact movements and condition on an hourly basis. However, Mr Maher should have been more proactive in knowing the whereabouts of the horses under his care. Once realising a horse had been injured, it was necessary for him to organise and provide veterinary treatment as a matter of prime concern. He neglected to do so and risked a poorer outcome for the horse. Fortunately, Sneaky Princess recovered in a timely manner. We accept that the breach is in the mid-range.

Mr Maher’s personal circumstances are as follows. He is aged 60, was born in Geelong and has lived in the Geelong area all his life. He has 2 daughters.

He has been involved in the horse industry most of his life. In addition, from 1982 to 2000 he was a serving police officer. From 2000 to 2019 he was also a financial consultant. Since 2019 his full-time profession and sole source of income has been from thoroughbred horse breeding and related activities.

He is developing his own boutique stud at the Cape Otway Road property (“Gunnamah Stud”) with a prized stallion, Oceanity, which he acquired in 2023. Oceanity has an excellent pedigree and his offspring are strong.

Currently he has 12 pregnant mares which are about to foal. He hoped to sell the foals as thoroughbred yearlings. As well, he is hoping to attract approximately 25 outside mares as paying customers to be covered by Oceanity.

The Tribunal was informed that if he is disqualified, he will not be able to conduct or assist with thoroughbred breeding, or permit or authorise anyone to conduct any activity associated with thoroughbred breeding on his behalf, or to receive any direct or indirect financial benefit from thoroughbred breeding. (AR 263(1)). Further, he will have no other viable source of income. He will be left with substantial expenses and debt. He owns two properties, one at Cape Otway Road and the other at Hangar Drive Mount Duneed where he resides. Both properties are mortgaged, with approximately $800,000 owing on Mt Duneed and $270,000 owing on Cape Otway Road. He is in the process of selling the Mt Duneed property in order to clear some debt and maintain cash flow for the Gunnamah Stud.

It was accepted by the Stewards that Mr Maher has been a registered owner/breeder since 2007. It was not disputed that he has an extensive history in “dealing with horses” for approximately 40 years. There are no adverse findings or breaches noted in his record as a breeder/owner with RVL during this time. We acknowledge his excellent record.

Mr Maher relied upon two references, one from clients of his financial business who are also in the thoroughbred horse breeding and agistment business. They spoke of the upgrade of his property with new fencing, shelters and easy access to all areas. They also were aware of the proceedings and were confident that such a situation would never be repeated. They referred to Mr Maher’s honesty and trustworthiness and said that they had no hesitation in referring clients to agist their thoroughbred horses on his property.

The other reference was from the person who undertook extensive work on Mr Maher’s property and is also the owner of horses managed by Mr Maher. Both references are supportive of Mr Maher’s character and involvement in the industry.

In addition, Mr Maher provided reports from Dr Vanner and Dr Chen, veterinarians from the Geelong Veterinary Hospital. They had inspected the property in July 2024. The report discloses that the number of horses had been reduced to 27. Overall, the horses were in good condition with a BCS of 3. The veterinarians referred to the significant improvement in infrastructure of smaller paddocks and fencing: The original 4 paddocks have been increased to 20 paddocks. The subdivided fences are largely constructed for horses and all fences are electrified. There has been extensive pasture improvement. Given the time of the year, there was no pasture growth. However, there was adequate pasture cover. There was evidence that the horses were supplemented with feed, with good quality hay in the paddock and stored in the sheds.

Taking all matters into account, the Tribunal accepts that the two instances the subject of the proven charges were isolated incidents in an otherwise lengthy involvement in the horse breeding industry, which is to Mr Maher’s credit. However, the behaviour or lack of care is not what was required in relation to the two horses in his care over an extended period. The Tribunal notes that Oceanity was purchased in 2023 at a time when you would have been aware of the current proceedings. Further, Mr Maher cannot rely upon a discount for a plea of guilty, and the related demonstration of remorse for his conduct by such a plea being entered.

The personal references and the veterinarian reports give the Tribunal confidence that it is most unlikely Mr Maher will offend in the future.

However, balancing Mr Maher’s previous good record with his conduct the subject of this proceeding, and the issues of animal welfare, general deterrence and the good name of the industry are matters of significance in the setting of penalty in this case.

The Tribunal also needs to consider the penalties imposed in similar cases. All cases sighted to the Tribunal were cases in which the participant had pleaded guilty, with the related demonstration of remorse of the participant for his/her conduct.

Taking all the above matters into account, the Tribunal accepts that a period of disqualification should be imposed to reflect the seriousness of the conduct, as a deterrence to others, and is of such duration that the reputation of the industry, in not tolerating breaches of animal welfare, will be maintained.

In respect of Brugia, Mr Maher will be disqualified for a period of 11 months.

In respect of Sneaky Princess, Mr Maher will be disqualified for 1 month. This penalty is to be served cumulatively with the disqualification for Brugia. We have ordered cumulation to reflect the fact that this charge arises out of completely different circumstances to the Brugia charge.

The disqualification will commence on the 13 September 2024.

Mark Howard

Registrar, Victorian Racing Tribunal