RACING NEW SOUTH WALES

APPEAL PANEL

21 March 2016

MR T HALE SC— CHAIRMAN
MR J FLETCHER
MR K LANGBY

IN THE MATTER OF THE APPEAL OF
MARTIN STEIN

REASONS FOR DECISION ON PENALTY

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1. Martin Stein (the Appellant) is a licenced trainer at stable premises at Albury Racecourse.

2. On 28 January 2016, the stewards at the Wagga Wagga Racecourse, T Vassallo Chairman and J Davidson, found Mr Stein (the Appellant) guilty of a breach of AR175(o)(i) and suspended his licence to train for a period of 3 months commencing immediately and expiring on 27 April 2016.

3. The Appellant appealed to this Panel against both the conviction and the severity of the penalty. During the course of the hearing the Appellant changed his plea and pleaded guilty.

4. AR175(o)(i) relevantly provides:

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

   (o) Any person in charge of a horse who in their option fails at any time –

   (i) to exercise reasonable care, control or supervision of a horse to prevent an act of cruelty to the animal.

5. AR 1 contains the following definition:

   Cruelty includes any act or omission as a consequence of which a horse is mistreated.

6. The particulars of the charge were:

   That you, licenced trainer Mr Martin Stein, did fail to exercise reasonable care and/or control of the racehorse *Fat Molly* to prevent any act of cruelty to that racehorse in that on the morning of 24 November 2015 the racehorse *Fat Molly*, which was under your care, control and supervision as a trainer, contrary to veterinary advice, was exercised on the horse walker at your stables upon Albury Racecourse when that mare was noticeably lame and with a substantial open wound to the near hind leg, such injury being sustained on or about 13 November 2015 and being diagnosed by veterinarian Dr Hilary Colwell at Hume Equine Centre as being a partially severed digital extensor tendon injury requiring the wound to be kept bandaged and the mare to be confined to stable rest.

7. The Appellant submits that the penalty of 3 months suspension is too severe and should be reduced. In support of his submission he points to a number of matters.
8. Firstly, he points to the fact that he has been a trainer for approximately 12 years. This is only his second offence. He was found guilty of a breach of AR175(o)(i) in August 2013. On that occasion he was in fact found guilty of 4 offences, so in that sense his submission is not strictly accurate. We will again refer to those offences. We do accept that other than those offences and the present offence, he has not been found guilty of any other offences.
9. Secondly, he points to the fact that when he discovered the injury he contacted the Stewards to advise them what had occurred.
10. Thirdly, he points to the fact that immediately after the injury was sustained to *Fat Molly* on 12 November 2015 the horse was appropriately treated. He says the treatment he arranged saved the horse from having to be euthanised.
11. Fourthly, he points out that he arranged for the horse to be treated the next day at the Hume Equine Centre.
12. We have taken each of these matters into consideration.
13. Fifthly, he says that the veterinarian (Dr Colwell) gave insufficiently clear instructions as to the treatment of the mare. We do not think that this is borne out by the evidence

of Dr Colwell. In any event, if the Appellant had been in any doubt as to the appropriate treatment he should have contracted Dr Colwell for clarification of her instructions.

14. Sixthly, the Appellant relies upon the fact that he did not personally put the horse on the walker. We see this submission as having little weight as it was his obligation as trainer to exercise reasonable care, control and supervision of the horse: see AR175(o)(i) and Local Rule 78. Further, this is no answer to the removal of the bandage contrary to the instruction of Dr Colwell. The Appellant accepts that he was responsible for the decision to remove the bandage from the mare on 24 November and that at that time he knew that Dr Colwell's instruction was to keep the wound bandaged.
15. Finally, the Appellant relies on his plea of guilty in mitigation of the penalty. We take this into account, however we note that the Appellant changed his plea to guilty very late on the day of the hearing and after most (if not all) evidence had been received. As such his changed plea is of limited weight in mitigating the penalty.
16. On balance, however, we consider the suspension of 3 months imposed by the Stewards is an appropriate penalty in all the circumstances and we confirm it. Although we have taken into consideration each of the matters raised by the Appellant, in our view the following matters lead us to the conclusion that a suspension of 3 months is appropriate.
17. Firstly, it must have been obvious to the Appellant, or indeed to anyone, that the horse had suffered a serious injury. This is demonstrated by the photographs Exhibit B1 and B2. The Appellant understood that the injury was of sufficient seriousness that it might have to be euthanised. In these circumstances extreme care should have been taken to ensure that Dr Colwell's instructions were complied with.
18. Secondly, it is the welfare of the horse that AR175(o) is seeking to ensure. The evidence shows that when the horse was put on the walker on 24 November 2015 it seemed agitated (transcript page 2 line 74). In his oral evidence Dr Craig Suann said that while on the walker the horse would have been in pain and discomfort. The horse therefore suffered due to the failure to adhere to the instruction given by Dr Colwell that it be confined to stable rest.
19. Thirdly, it must have been obvious that such an extensive open wound on the hind leg of the horse, as is shown in Exhibit B1 and B2, was at risk of contamination unless bandaged. Yet the Appellant had the bandage removed contrary to Dr Colwell's instructions. Given the dust and dirt in the vicinity of the walker the removal of the bandage exposed the wound to a particularly high level of risk of contamination.

20. Fourthly, as has been mentioned, the Appellant has a previous conviction under the same rule for a similar offence. He was found guilty of a breach of AR175(o)(i) on 28 August 2013 in relation to a horse named *Snakes Hiss* and was fined $1,000. On that occasion he had the horse trot a circuit of the Albury Sand Track when the horse was noticeably lame and had swelling and inflammation to the rear hind hock. He was also found guilty and fined $3,000 for a breach of AR175(o)(iii), in failing to provide for veterinary treatment where such treatment was necessary for the horse. He was also found guilty under AR178F of failing to keep a treatment book and fined $400 and the sum of $200 under LR82(3) for failing to have a stable employee registered.
21. In all the circumstances the appeal on severity should be dismissed and the penalty of 3 months' imposed by the Stewards confirmed.
22. The suspension will commence on 21 March 2016 and expire on 21 June 2016.