

APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL OF DANIEL RILEY

Appeal Panel: **Mr R. Beasley SC – Principal Member;**
Mr J Nicholson;
Mr P Santucci

Appearances: **Racing NSW: Mr Marc Van Gestel, Chairman of Stewards**
Appellant: No appearance

Date of Hearing: **16 January 2020**

Date of Reasons and **16 January 2020**

Orders:

REASONS FOR DECISION

1. On Friday 28 June 2019, Mark Holloway, the Chief Steward of the Northern Rivers Racing Association, attended a property at Tararray Pet Retreat in Coffs Harbour. He was accompanied by Dr Andrea Boland, a registered veterinarian.
2. Mr Holloway and Dr Boland inspected the 5-year-old retired racehorse Liezhi Mei ('the horse') on the property. The horse was found to be in an extremely poor condition. Dr Boland assessed the horse as having a body condition score of "0/5". Despite clearly being malnourished, Dr Boland found no signs of disease.
3. The appellant was identified as the owner of the horse. He was told by Mr Holloway that the horse's condition could be improved by proper nutrition, under the supervision of Dr Boland. He agreed to take measures to improve

the horse's condition, and was advised the horse would be inspected again by Stewards in one month. However, on 23 July 2019, the appellant advised Mr Holloway that the horse had been euthanised. This was done without certification from a registered vet, or authorisation of Racing NSW.

4. The appellant was summonsed to appear at a Stewards' Inquiry on 28 August 2019. He did not appear. Further attempts were made, unsuccessfully, to have the appellant appear at an Inquiry.
5. Eventually, on 11 December 2019, the appellant appeared at a Stewards' Inquiry into the condition and death of the horse. He was charged during that Inquiry with breaches of the following Rules of Racing:

Charge 1: Breach of AR 231(1)(b)(iv), which provides that a person in charge of a horse must not fail to provide proper and sufficient nutrition to it.

Charge 2: Breach of AR 231 (1)(b)(iii), which provides that a person in charge of a horse must not fail to provide veterinary treatment to a horse where such treatment is necessary.

Charge 3: Breach of LR 114(4), relating to euthanising a horse without certification from a vet indicating it was necessary on welfare or safety grounds, or with approval in writing from Racing NSW, or where extreme circumstances exist, that are later confirmed by a vet.

Charge 4: Breach of AR 232(b), relating to failure to comply with an order, direction or requirement of a Steward.

6. The charge sheet, which includes full particulars of the breaches, is attached to these reasons and marked 'A'.
7. The appellant pleaded not guilty to Charge 1, but was found guilty by Stewards. He was penalised by way of a 12-month disqualification.

8. The appellant pleaded guilty to each of Charges 2, 3 and 4. He was penalised with a 9-month disqualification for Charges 2 and 3, and a 3-month disqualification for Charge 4. The Stewards determined that the penalty for Charges 1 and 2 should be served concurrently. They also determined that 3 months of the penalty for Charge 3 be served concurrently with the other penalties. This resulted in a disqualification of 21 months, commencing on 11 December 2019, and expiring on 11 September 2021.
9. On 12 December 2019, the appellant lodged an appeal to the Panel. He did not indicate on his appeal form whether the appeal related to either the findings of breach of the Rules, or only to the severity of the penalty imposed.
10. The appeal was listed for hearing on 16 January 2020. There was no appearance by the appellant. Attempts were made to locate the appellant on various levels of the Racing NSW premises, to no avail.
11. Mr Van Gestel, the Chairman of Stewards, appeared for Racing NSW. In addition to the appeal book, he tendered a bundle of communications between Racing NSW and the appellant (Exhibit B). From this bundle, it is clear that:
 - (a) The appellant was advised by post, and email, that his appeal was listed for 16 January 2020. Mail sent to him was sent to the address he provided to Racing NSW. Emails were sent to an email address he provided.
 - (b) Many attempts were made to contact the appellant by phone and email. Many were unsuccessful.
 - (c) The appellant was advised that if he failed to attend the hearing, his appeal would be dismissed.
 - (d) On 14 January 2020, the appellant sent an email to Racing NSW, indicating that “due to mental health problems [he] will not be attending the hearing”.
 - (e) Ms Hayley Turner from Racing NSW then responded to the appellant almost immediately by email, indicating that Mr Phillip O’Brien, the Racing NSW Welfare Officer, would contact him regarding “free counselling services”.

- (f) Mr O'Brien had a conversation with the appellant, who indicated he was unwell, but did not wish to take up the offer of counselling.
12. The Panel treated the appellant's 14 January email as a request for an adjournment. This was opposed by the Stewards, on the basis that there was no evidence to support the appellant's request. He was then sent an email by Racing NSW also on 14 January, advising that if he wished to pursue an application to adjourn his appeal, he should provide the Panel with a letter or report from a medical practitioner, indicating he was not well enough to prosecute his appeal.
 13. As indicated above, there was no appearance by the appellant at the appeal hearing. Further, no medical evidence was provided by him in support of his application to adjourn.
 14. The Panel determined to refuse to adjourn the appeal. Given there was no appearance by or on behalf of the appellant, the appeal was dismissed. The orders made by the Panel are as follows:
 1. Appeal in relation to findings of breach of AR 231(b)(iv) (Charge 1), AR 231(1)(b)(iii) (Charge 2), LR 114(4) (Charge 3), and AR 232(b) (Charge 4) is dismissed.
 2. Findings of breach of each of the Rules referred to in 1 above confirmed.
 3. Appeal in relation to penalties imposed in relation to Charges 1 to 4 dismissed.
 4. Penalties imposed in relation to Charges 1 to 4 confirmed. Total penalty imposed is a 21-month disqualification, which commences on 11 December 2019, and expires on 11 September 2021.
 5. Appeal deposit forfeited.

Attachment A - charges

Registered owner Mr Daniel Riley you are hereby charged under AR231(1)(b)(iv) which states –

AR231(1)(b)(iv) - A person must not if the person is in charge of a horse – fail at any time to provide proper and sufficient nutrition for the horse;

The details of charge being –

1. That you registered owner Mr Daniel Riley were the person in charge of the retired racehorse *Liezhi Mei* at all relevant times up to or around 23 July 2019.
2. Between 3 August 2018 and 28 June 2019 you did fail to provide proper and sufficient nutrition for *Liezhi Mei* resulting in body condition loss during that period.
3. *Liezhi Mei* was found upon veterinary inspection on 28 June 2019 to have a body condition score of 0/5.
4. *Liezhi Mei* was subsequently euthanased, at your direction, on or around 23 July 2019 due to its poor body condition.

How do you plead?

Charge 2

Registered owner Mr Daniel Riley you are hereby charged under AR231(1)(b)(iii) which states –

AR231(1)(b)(iii) - A person must not if the person is in charge of a horse – fail at any time to provide veterinary treatment to the horse where such treatment is necessary for the horse;

The details of charge being –

1. That you registered owner Mr Daniel Riley were the person in charge of the retired racehorse *Liezhi Mei* at all relevant times up to or around 23 July 2019.
2. Between 3 August 2018 and 23 July 2019 you did fail to provide veterinary treatment for *Liezhi Mei* where that treatment was necessary to investigate, and treat, the mares poor body condition.
3. *Liezhi Mei* was found upon veterinary inspection on 28 June 2019 to have a body condition score of 0/5.
4. *Liezhi Mei* was subsequently euthanased, at your direction, on or around 23 July 2019 due to its poor body condition.

How do you plead?

Charge 3

Registered owner Mr Daniel Riley you are hereby charged under LR114(4) which states –

LR114(4) – A registered owner, trainer or any person that is in charge of or has in his or her possession, control or custody of any horses (Eligible Horses, Unnamed Horses and Named Horses) is not to euthanize or destroy a horse (or permit a horse to be euthanized or destroyed) unless a registered veterinary surgeon has certified in writing that it necessary on welfare or safety grounds or for reasons approved in writing by Racing NSW or unless under extreme circumstances where it necessary for a horse to be euthanized immediately and the decision is subsequently confirmed by a veterinary surgeon.

The details of the charge being that –

1. That you registered owner Mr Daniel Riley were the person in charge of the retired racehorse *Liezhi Mei* at all relevant times up to or around 23 July 2019.
2. On or around 23 July 2019 you did permit *Liezhi Mei* to be destroyed with the use of a “bolt gun”.
3. You did fail to seek veterinary advice or certification that such action was necessary either prior to or following such action.

Charge 4

Registered owner Mr Daniel Riley you are hereby charged under AR232(b) which states –

AR232(b) – A person must not fail or refuse to comply with an order direction or requirement of the Stewards or an official.

The details of the charge being that –

1. In correspondence dated 9 August 2019 you were advised that your presence was required at 1pm on Wednesday 28 August 2019 at Coffs Harbour racecourse to allow stewards to inquire into the body condition of *Liezhi Mei* and its subsequent death. You failed to respond to such correspondence and failed to attend the proceedings as requested.
2. In correspondence dated 24 September 2019 you were directed that your presence was required at 10am on Monday 14 October 2019 at Coffs Harbour racecourse to allow stewards to inquire into the body condition of *Liezhi Mei* and its subsequent death. You failed to respond to such correspondence and failed to attend the proceedings as requested.

How do you plead?