DETERMINATION OF THE

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:	**CLINT RAYMOND JONES**
APPLICATION NO:	**A30/08/707 AND**
APPELLANT:	**MELISSA LARRAINE COLLINS**
APPLICATION NO:	**A30/08/708**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR P HOGAN (MEMBER)** **MR J PRIOR (MEMBER)**
DATE OF HEARING:	**1 DECEMBER 2009**
DATE OF DETERMINATION:	**17 DECEMBER 2009**

IN THE MATTER OF appeals by CLINT RAYMOND JONES and MELISSA LARRAINE COLLINS against the determinations made by the Racing and Wagering Western Australian Stewards of Thoroughbred Racing on 7 May 2009 imposing a disqualification of 5 years in each case for breach of Rule 175(o)(i) of the Rules of Thoroughbred Racing.

Mr T Percy QC appeared for each Appellant.

Mr R J Davies QC represented Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

This is a unanimous decision of the Tribunal.

The appeals against the penalties are upheld. The penalty of five years disqualification imposed by the stewards for each Appellant is substituted by a penalty of disqualification for a period beginning on 7 May 2009 and ending on the date of delivery of the Tribunal's decision for each Appellant.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

APPEALS – 707 and 708

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR P HOGAN (MEMBER)

APPELLANT:	**CLINT RAYMOND JONES**
APPLICATION NO:	**A30/08/707 AND**
APPELLANT:	**MELISSA LARRAINE COLLINS**
APPLICATION NO:	**A30/08/708**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR P HOGAN (MEMBER)** **MR J PRIOR (MEMBER)**
DATE OF HEARING:	**1 DECEMBER 2009**
DATE OF DETERMINATION:	**17 DECEMBER 2009**

IN THE MATTER OF appeals by Melissa Larraine Collins and Clint Raymond Jones against the determinations made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 7 May 2009 imposing a disqualifications of 5 years in each case for breach of Rule 175(o)(i) of the Rules of Thoroughbred Racing.

Mr T Percy QC appeared for each Appellant

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

INTRODUCTION

These are appeals against penalty. The Appeals have been heard jointly because the factual circumstances are common to each Appellant.

On 7 May 2009, the Racing and Wagering Western Australia ("RWWA") Stewards of Thoroughbred Racing disqualified each of the Appellants for five years for a breach of Rule 175(o)(i) of the Rules of Thoroughbred Racing.

The relevant parts of Rule 175 are in the following terms:

OFFENCES

AR.175. *The Committee of any Club or the Stewards may punish;*

> *(o) Any person in charge of a horse who in their opinion fails at any time –*
>
> > *(i) to exercise reasonable care, control or supervision of a horse to prevent the commission of an act of cruelty upon the animal;.....*

THE FACTS

The facts are not in dispute. The Chairman of the Stewards at the inquiry said at T17:

> *"You were co-operative, at no stage did you ever dispute the facts.....at no stage did you ever hide from the truths. We do accept that you fell on hard times and we do accept that you have shown some sort of remorse, for what in fact happened".*

The facts are more fully set out in the submissions on behalf of the Appellants. I repeat the relevant parts here, which I have taken directly from those submissions.

Mr Jones was a licensed stablehand rider, employed as a farrier at the relevant times. Ms Collins was a licensed trackrider, employed by a local trainer. They are in a de-facto relationship with one another, and reside at their leased property at Cuthbert, Albany. The Appellants were also pre-training several horses in the stables on their property.

In December 2008 the Appellants were responsible for a number of horses kept at the property, including the seven horses that were the subject of the inquiry. The

Appellants found themselves in a period of financial hardship and were struggling to afford to provide sufficient food to the horses in their care as a result of a number of factors, not in dispute. They made several ongoing attempts to sell the horses between December 2008 and February 2009.

The Appellants contacted the pet meat shop in Albany. The man they dealt with said that he needed a few weeks to clean out his freezer and then he would take the horses. Several weeks later, he told them he could no longer take them as the contract he had for horsemeat had fallen through. However the Appellants remained in contact with the store on an ongoing basis as he tried to locate a market. They made several other contacts in Perth and interstate in an effort to sell the horses. None were successful.

On 23 March 2009, RSPCA Inspector Ms Milne attended the Appellants' property in response to complaints about the condition and welfare of several horses. She observed a number of horses to be in poor condition. She observed a lack of sufficient feed. On 24 March 2009, Ms Milne attended the Appellants' property again. Later that day, she spoke to Mr Jones on the phone. Mr Jones said that they were in the process of destocking. Ms Milne gave Mr Jones a verbal direction to feed the horses. Ms Milne also contacted RWWA Investigator Mr O'Reilly. He contacted Ms Collins, who advised that she was in the process of disposing of the animals and that this would be done in the near future.

On 1 and 9 April 2009, Ms Milne re-visited the Appellants' property. On 9 April, having seen that there was no improvement, Ms Milne told Mr Jones that he could surrender the horses to the RSPCA. This is apparent from Exhibit 10 at the inquiry, which is Ms Milne's report. Mr Jones declined, as he took the view that the horses might well end up worse off after being moved around unwanted from place to place. Mr Jones said that he would have the horses destroyed. On 9 April, Ms Milne gave Mr Jones a verbal direction to feed the horses. Ms Milne contacted Mr O'Reilly again and stated her concerns about the horses. One of the concerns she had, again apparent from Exhibit 10, was Mr Jones' proposal to have the horses destroyed. Mr O'Reilly contacted Mr Askevold, a senior trainer in Albany and employer of the Appellants. Mr Askevold advised Mr O'Reilly that a plan to dispose of the Appellants' horses had been put in place and would be carried out as soon as possible.

On 20 and 21 April 2009, seven horses were euthanized at the property. The next day, Ms Milne issued Ms Collins with a formal written direction to provide proper and sufficient food to all horses remaining in the care of her and Mr Jones.

On 6 May 2009, Mr O'Reilly attended at the Appellants' premises. Mr O'Reilly inspected the property and conducted video interviews with the Appellants.

THE OFFENCE

On 7 May 2009, at the Stewards inquiry in Albany, the Appellants were charged with failing to exercise reasonable care, control or supervision of horses to prevent the commission of an act of cruelty upon the animals. The particulars were set out by the Chairman at T15-16, as follows:

> *"In view of you, in view of you having accepted joint liability for these horses you (sic) going to both need to answer the charge separately and individually. And the charge is going to be that you failed in the opinion of the Stewards to take reasonable care of the horses that were on a block of land at the corner of Lower Denmark Road and Robinson Road, Albany, thereby rendering them in a poor condition and a state of malnutrition."*

Each of the Appellants pleaded guilty, and each was disqualified for 5 years.

THE GROUNDS OF APPEAL

The grounds of appeal are as follows:

1. The Stewards erred in imposing a penalty on each of the appellants that was manifestly excessive in all the circumstances of the case.

Particulars

The penalties failed to adequately reflect the following mitigating factors:

(a) The Appellants' pleas of guilty;

(b) The Appellants' co-operation with the investigating officers;

(c) The Appellants' good antecedents;

(d) The Appellants' financial circumstances;

(e) The efforts made by the Appellants to dispose of the animals in question;

(f) The Appellants' remorse; and

(g) The effect that the penalty would have on the Appellants.

2. The Stewards erred in finding as an aggravating factor in the case the proposition that the Appellants did not surrender their animals to the RSPCA.

THE STEWARDS' REASONS

The Stewards took into account all the relevant factors. In his reasons, the Chairman took into account all of the particulars set out in the first of the grounds of appeal. Ground one does not complain that the Stewards failed to take those things into account, only that the penalty was manifestly excessive. Whether that is so depends upon a consideration of the case as a whole. The particulars do not assist me in determining ground one.

The Chairman in his reasons also said that the Appellants may have alleviated the whole situation by surrendering the horses earlier to the RSPCA. Ground two complains that the Stewards should not have held that against the Appellants as an aggravating factor. I am inclined to agree.

The Chairman asked the Appellants (T 10-11) why they did not allow the RSPCA to take the horses, after Ms Milne had put that as an option on 9 April. Ms Collins conceded (T 11) that it would have been the *'"responsible thing to do"* and would have absolved *"at least some of the hardships"* that they were facing at the time. Ms Collins also outlined an experience she had had in the past when she had given up a horse, only to be contacted later to be told that the horse was in poor condition. She said that she did not want that to happen again. Mr Jones also said to Ms Milne, noted in Exhibit 10, that he would not surrender the horses to the RSPCA because there were *"too many useless horses around".*

I would add that my interpretation of Ms Milne's report, Exhibit 10, is that Ms Milne was not entirely in agreement with Mr Jones' proposal, communicated to her on 9 April, to euthanize the horses. As noted above, Ms Milne communicated the proposal to Mr O'Reilly as a concern, rather than an obvious solution.

I am satisfied that ground two has been made out. Both Appellants had proper concerns about the usefulness of surrendering the horses to the RSPCA. The Stewards held against them their refusal to surrender the horses, and in my opinion that was an error. It should be borne in mind as well that neither Appellant was charged by the RSPCA with any offence, even though that organization had been involved for almost one month before the horses were euthanized.

DETERMINATION OF THE APPEAL

It is not for the Tribunal here on appeal to substitute its own opinion for that of the Stewards. If it cannot be shown that the Stewards were in error, or that the penalty was manifestly excessive, then the penalty will not be interfered with on appeal. In my opinion, the Stewards made no error of fact or principle. However, I am of the opinion that the penalty was manifestly excessive.

There is no identifiable tariff for an offence of this nature. I have not been able to identify a range of penalties commonly imposed. Counsel for the Appellants and Counsel for the Stewards did not refer to any range, because there is none. Despite that, the Tribunal here is still required to determine whether the penalty was manifestly excessive.

The offence here was serious, with the potential to cause great damage to the public perception of the racing industry. The horses' welfare depended entirely on those who had the responsibility to care for them. The Appellants failed in their duty to properly care for the horses. Even after the Appellants had been put on notice by Inspector Milne, they failed to act. On the other hand, it cannot be said that the Appellants acted in any way maliciously towards the horses, or even that the Appellants acted out of self interest. Indeed, they had been taking steps to dispose of the horses well before complaints were made. The impression gained from all of the material in the case is that the Appellants were overwhelmed by their circumstances, leading to them not treating the welfare of the horses as a priority

In my opinion, a penalty of five years disqualification should be imposed for offences at the upper level of seriousness. This was not one of them. The penalty of five years was manifestly excessive.

I would allow each appeal. I would set aside the penalty of five years disqualification, and substitute a penalty of disqualification for a period beginning on 7 May 2009 and ending on the date of delivery of the Tribunal's decision.

PATRICK HOGAN, MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON (CHAIRPERSON)

APPELLANT: CLINT RAYMOND JONES
APPLICATION NO: A30/08/707 AND

APPELLANT: MELISSA LARRAINE COLLINS
APPLICATION NO: A30/08/708

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR P HOGAN (MEMBER)
MR J PRIOR (MEMBER)

DATE OF HEARING: 1 DECEMBER 2009

DATE OF DETERMINATION: 17 DECEMBER 2009

IN THE MATTER OF appeals by CLINT RAYMOND JONES and MELISSA LARRAINE COLLINS against the determinations made by the Racing and Wagering Western Australian Stewards of Thoroughbred Racing on 7 May 2009 imposing a disqualification of 5 years in each case for breach of Rule 175(o)(i) of the Rules of Thoroughbred Racing.

Mr T Percy QC appeared for the Appellants.

Mr R J Davies QC appeared for Racing and Wagering Western Australian Stewards of Thoroughbred Racing.

I have had the opportunity of reading the draft reasons of Mr P Hogan, Member. I agree with his treatment of the facts, general line of reasoning and conclusion as to the appropriate outcome. As this type of offence has not come before RWWA Stewards previously I am inclined to add some brief comments and an explanation why I support interfering with the Stewards' penalty.

Australian Racing Rule 175 states:

> *'....the Stewards may penalise.....*
> *(o) Any person in charge of a horse who in their opinion fails at any time –*
> *(i) to exercise reasonable care.....of a horse so as to prevent an act of cruelty to the animal...'*

As has been observed many times before in the case of an appeal in respect of a breach of a rule which includes the phrase *'...in the opinion of the Stewards...'* the Stewards' decision as to guilt should not be interfered with unless it can be shown that the opinion arrived was so unreasonable as to be untenable. I am conscious in such appeals of the need to avoid substituting my opinion of the matter for that of the acknowledged racing industry experts. Because of their specialist knowledge and experience the Stewards are appointed to exercise wide powers and perform the difficult task of assisting RWWA to control and regulate the racing industry. When adjudicating an appeal in respect of a rule of the type in question one needs to be very mindful of not usurping the Stewards' discretion both as to conviction and penalty. In determining the penalty appropriate to an offence the Stewards are, by virtue of their knowledge and experience, eminently qualified to do so. As Mr Hogan states in his reasons, an error must be shown to have occurred or the penalty must be manifestly excessive for the Tribunal to be persuaded to override the Stewards' penalty.

As there apparently are no cases to refer to involving the type of misconduct which these appellants engaged in, the task of arriving at an appropriate penalty is very difficult. One may be aided in the process by reference to the most comparable cases and by trying to seek some assistance from correlating penalties imposed for other misdemeanours. Mr

Percy QC in his written submissions has helpfully referred the Tribunal to the following cases involving mishandling of animals:

1 *Santich* (Appeal 457), where failing to render proper care to a badly injured horse which led to its destruction resulted in a four month suspension;

2 *Chomiak* (Appeal 378) (Rule 175A), where mistreating a registered race horse resulted in a three month suspension and fine of $500 which were reduced on appeal to one month and no fine;

3 *Bull* (Appeals 539 and 540), where deliberately inflicting harm on horses by using a 'stock whip' and modified 'swish' whip whilst training over an extended period (being behaviour detrimental to the industry) resulted in a 12 month disqualification which was confirmed on appeal; and

4 *Richards* (Appeal 541), where an offence of the same nature as in *Bull* resulted in a 12 month disqualification which on appeal was reduced to six months as the conduct was confined to one horse on two occasions only.

I am conscious of the numerous cogent mitigating factors identified by Mr Percy, being the guilty pleas, co-operation, good antecedents, poor financial circumstances, efforts made to dispose of the animals, remorse and the adverse personal consequences of the penalty on both appellants. Collectively these factors significantly ameliorate what are otherwise clear examples of substantial neglect of numerous horses by both appellants. The situation was aggravated by the fact that the neglect continued over quite some months despite the fact that the appellants received directions to address matters in the meanwhile.

As lamentable as the appellants' conduct was to the welfare of the animals in question and the image of the sport, it did not however include any element of cheating or gaining personal benefit. Nor was it deliberate or malicious. No cavalier attitude or flagrant breach of the Rules was involved. Looked at in this light the misconduct lacked some of the serious aspects and undesirable consequences which the Stewards and the Tribunal not

infrequently must consider, such as the impacts on members of the betting public and government revenue derived from racing. Happily, many of the elements which usually apply to illegal substance presentation or administration offences were not applicable here. As bad as prohibited substance offences are and as severe as punishment for drug offences needs to be, these other type of offences rarely attract five years disqualification, even in the case of most repeat offenders.

Taking into account the absence of the factors which I have just referred to and the severity of penalties imposed for other serious offences I am satisfied that the penalty proposed by Mr Hogan, of a disqualification from the date of the Stewards' decision on 7 May 2009 to the date of delivery of the Tribunal's decision, is the appropriate punishment for each appellant in the circumstances of these appeals. The consequences of such disqualifications are that the appellants, who are financially constrained, have been denied the ability to earn any livelihood out of racing and have been excluded from the industry for over six months. Being deprived of their livelihoods and by suffering the other disqualification consequences for such a relatively lengthy period should, in my assessment, be both a salutary lesson to the appellants as well as a sufficient warning to others that this type of conduct has absolutely no place in racing. The need to properly care for horses is an irrefutable obligation of any licensed person. However, in my judgment it would be too unreasonable for the five year disqualifications to be sustained.

DAN MOSSENSON, CHAIRPERSON

APPEALS – 707 and 708

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR JOHN PRIOR

APPELLANT:	**CLINT RAYMOND JONES**
APPLICATION NO:	**A30/08/707 AND**
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Mr T Percy QC appeared for each Appellant

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

I have read the draft reasons of Mr P Hogan, Member.

I agree with those reasons and conclusions and have nothing further to add.

John Prior **JOHN PRIOR, MEMBER**