

## DECISION

### *Racing Integrity Act 2016, Section 252AH*

<b>Review application number</b>	RAP-6
<b>Name</b>	Desleigh Forster
<b>Panel</b>	Mr. K J O'Brien AM (Chairperson) Mr P O'Neill (Deputy Chairperson) Mr D Guppy (Panel Member)
<b>Code</b>	Thoroughbreds
<b>Rule</b>	Charge 1 Australian Rule of Racing AR 133 Possession of stockwhip A person must not have in his or her possession a stockwhip: (a) at a racecourse;  Charge 2 Australian Rule of Racing AR 231 Care and welfare of horses (1) A person must not: (a) Commit or commission an act of cruelty to a horse, or be in possession of any article or thing which, in the opinion of the Stewards, is capable of inflicting cruelty to a horse.  Charge 3 Australian Rule of Racing AR 231 Care and welfare of horses (4) A person must not use a stockwhip on a horse in any circumstances relating to racing, training or pre-training, regardless whether the horse is registered.
<b>Penalty Notice number</b>	Charge 1 – PIN007756 Charge 2 – PIN007755 Charge 3 – PIN007757
<b>Counsel Representation</b>	Mr. JE Murdoch KC for the Applicant Mr. T Ryan KC for the Respondent
<b>Hearing Date</b>	17 April 2023
<b>Decision Date</b>	3 May 2023
<b>Panel decision</b>	The decision of the Panel is that: <ul style="list-style-type: none"><li>• In respect of Charge two, the racing decision is set aside and a decision of not guilty is substituted.</li><li>• In respect of Charge three, the racing decision is varied and a penalty of \$6,000 is substituted for the original penalty of four months disqualification.</li></ul>

## INTRODUCTION

- [1] The applicant in this matter, Ms Desleigh Forster, is a licensed trainer of racehorses who leases stables at the Eagle Farm Racecourse.
- [2] On the 23 March 2023, Stewards conducted an inquiry into the alleged use by the applicant of a stockwhip on a thoroughbred (Private Banker) in the Brisbane Racing Club swimming pool on the 23rd of February 2023.
- [3] Following that hearing, the applicant was charged with three offences against the Australian Rules of Racing specifically - AR133(a) - possession of a stockwhip at a racecourse, AR 231(1)(a) - committing an act of cruelty to a horse and AR231(4) - using a stockwhip on a horse in any circumstances relating to racing, training or pretraining.
- [4] The particulars of charges one and three, to which the applicant pleaded guilty, were as follows: -
- [5] **Charge one:**  
That on the 23rd of February 2023, (the applicant) as a licensed trainer with the Queensland Racing Integrity Commission (QRIC) entered the equine pool facility at the Eagle Farm Racecourse, with the registered thoroughbred, Private Banker, in possession of a stockwhip for the purpose of training.
- [6] **Charge three:**  
That on the 23rd of February 2023, (the applicant) as a licensed trainer with QRIC entered the equine facility in Eagle Farm Racecourse with registered thoroughbred Private Banker and in possession of a stockwhip for the purpose of training, use the stockwhip to encourage Private Banker to enter the equine pool.
- [7] The particulars of charge two, to which the applicant entered a plea of not guilty were, in their final amended form, as follows: -

### **Charge two:**

On 23 February 2023, the applicant who was a licensed trainer did commit acts of cruelty to the registered thoroughbred, Private Banker at the equine pool facility at the Eagle Farm Racecourse by reason of the following:

(1) While assisted by a stable hand who was leading Private Banker into the pool and a Brisbane Racing Club employee who was using a lunge whip, the applicant attempted to entice the horse deeper into the water.

(2) When Private Banker refused to enter further into the water, the applicant committed acts of cruelty on Private Banker, namely:

(a) the applicant struck Private Banker on its hind legs with a stockwhip, resulting in the horse rearing up and landing on all fours.

(b) the applicant then struck Private Banker a second time on its hind legs with a stockwhip resulting in the horse rearing up and falling back onto its buttocks.

(c) the applicant struck Private Banker a third time with a stockwhip on its hind legs resulting in the horse rearing up and falling back on its buttocks and then rolling over to the side and, in the process of getting up, the horse moved its leg on the ground and took skin off the leg.

(3) The applicant's conduct as alleged resulted in Private Banker being mistreated by reason of it displaying agitation, distress, fear, aversive flight behaviour and reacting in a way that led to it sustaining injury to one of its hind legs.

[8] The applicant was found guilty of this charge, the penalty imposed being one of six months disqualification. In relation to charge three, a concurrent period of four months disqualification was imposed. The penalty imposed for the first charge was a fine of \$1000.

[9] Pursuant to section 252AB the *Racing Integrity Act 2016* the applicant now seeks a review of the penalty imposed for charge three, and a review of both the finding of guilty and the penalty imposed for count two. There is no challenge to the penalty imposed in charge one.

[10] The relevant grounds of the application for review in respect of charge three are as follows:-

#### **Liability**

Evidence before the Racing Appeals Panel does not support a charge of 'cruelty to a horse', the required standard of proof, or at all.

On the proper construction of AR231(1), the events which transpired at the Eagle Farm equine swimming pool on the 23rd of February 2023, involving the applicant and the horse Private Banker, were not within the ambit of 'cruelty to a horse', as that term is given meaning by the text and full context of the Australian Rules of Racing.

#### **Penalty**

Having regard to the dual objectives of specific and general deterrence, a fine is the most appropriate means to achieving the desired ends.

A disqualification will have collateral consequences for the Applicant which are so disproportionately severe as to make a disqualification an inappropriate and unfair penalty.

### **EVIDENCE BEFORE THE STEWARDS**

[11] Mr. Andrew Chapman, an equine pool attendant at Eagle Farm Racecourse, described an incident that had occurred on the morning of the 22nd of February 2023. When he overheard the applicants say to her staff that she intended to bring a stockwhip to the pool to deal with a problem horse.<sup>1</sup> Mr. Chapman told the applicant that she could not do that.<sup>2</sup>

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<sup>1</sup> Transcript of Stewards Inquiry 23/02/2023 recording #1 lines 119-123

<sup>2</sup> Transcript of Stewards Inquiry 23/02/2023 recording #1 lines 119-123

According to Mr. Chapman, the applicant was 'A couple of metres away, when he said this'<sup>3</sup>. She had, however, not responded, said nothing and walked away.<sup>4</sup>

- [12] It should be noted that the applicant, who has a hearing problem, denies hearing Mr. Chapman make reference to the stockwhip.<sup>5</sup> The applicant's statement, to the stewards' inquiry was that she was unaware of AR133 and the prohibition against stockwhips at racecourses. It is noted this has been a rule of racing in Queensland since 2009.
- [13] Mr. Chapman was aware of an incident two days previously when similar difficulties were experienced with the horse unwilling to enter the pool. On that occasion, the horse had reared and refused to come to the walkway into the pool. A 'buggy whip' or 'lunging whip' was then used, unsuccessfully, to 'help chase it in'.<sup>6</sup> Mr. Chapman said that the 'lunging whip' is made available for the use of trainers and stable hands in the pool walkway area. It is the whip of the same type used behind barriers.<sup>7</sup>
- [14] Mr. Jason Brown is a track and ground attendant at the Brisbane Racing Club and was present on the afternoon of the 23rd of February 2023 when the 'troublesome horse' (Private Banker) was brought to the pool area. According to his statement, which was read into the record at the inquiry, he saw the applicant holding the stockwhip, though he, like her, was not aware that a stockwhip was not permitted on a racecourse.
- [15] As the horse began to walk into the pool it 'started playing up, buck, kick and rear up a lot'.<sup>8</sup> The applicant then began 'flicking the whip up behind the legs of the horse .... for about two or three minutes'.<sup>9</sup> Mr. Brown then picked up the 'buggy whip' and used it to provide assistance, but 'the horse wouldn't move forward, just spinning around a lot'<sup>10</sup> The applicant flicked the stockwhip again, the horse reared twice and fell over. When the horse regained its feet, the applicant 'again flicked it with the stockwhip'. The horse fell 'again very hard' the third time and took a large piece of skin off its rear leg...there was a lot of blood'<sup>11</sup>.
- [16] Although he provided that description in his formal statement, Mr. Brown's oral evidence at the inquiry was somewhat different. Describing the injury, he said that, in the process of getting up, the horse moved its leg on the ground 'and sort of took a bit of skin off it'<sup>12</sup>. He saw a 'little graze' on the horse's leg<sup>13</sup> and 'a bit of red on the ground ... a couple of droplets around'<sup>14</sup>.

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<sup>3</sup> Transcript of Stewards Inquiry 23/02/2023 recording #1 lines 177

<sup>4</sup> Transcript of Stewards Inquiry 23/02/2023 recording #1 lines 172

<sup>5</sup> Transcript of Stewards Inquiry 23/02/2023 recording #1 lines 335-346

<sup>6</sup> Transcript of Stewards Inquiry 23/02/2023 recording #1 lines 181-196

<sup>7</sup> Transcript of Stewards Inquiry 23/02/2023 recording #1 lines 119-220

<sup>8</sup> Transcript of Stewards Inquiry 23/02/2023 recording #1 lines 526-527

<sup>9</sup> Transcript of Stewards Inquiry 23/02/2023 recording #1 lines 528-530

<sup>10</sup> Transcript of Stewards Inquiry 23/02/2023 recording #1 lines 531-534

<sup>11</sup> Transcript of Stewards Inquiry 23/02/2023 recording #1 lines 538-542

<sup>12</sup> Transcript of Stewards Inquiry 23/02/2023 recording #1 lines 758-759

<sup>13</sup> Transcript of Stewards Inquiry 23/02/2023 recording #1 lines 769-777

<sup>14</sup> Transcript of Stewards Inquiry 23/02/2023 recording #1 lines 769-782

- [17] Mr. Brown could not be certain if the whip made contact with the horse and said that he could not determine the force involved – ‘it wasn't deliberately whipping the horse, it was aimed at its hind legs, ... that's where you sort of want to nick it or flick it with the whip’<sup>15</sup>. Mr. Brown spoke elsewhere of ‘a bit of a flick’ around the hind legs.
- [18] Mr. Gregory Hedge was a stable hand employed by the applicant who had been present with Private Banker at the pool on the 23rd of February 2023.
- [19] On a previous occasion, a ‘day or two earlier’, the horse had demonstrated a reluctance to enter the pool area. On the 23rd of February, the horse displayed similar reluctance and was ‘playing up bad’. The applicant gave him both a couple of flicks around the back legs with the stockwhip and he ‘kept charging backwards’<sup>16</sup>.
- [20] They tried to reverse the horse, but he refused to enter – ‘we just packed up and went home’.<sup>17</sup>
- [21] He said the horse had fallen over but had not hurt itself. He said the stockwhip was used about three or four times. When asked where the applicant was striking the horse, Mr. Hedge said ‘flicking it, flicking it around the legs’.<sup>18</sup> When asked about the force involved with the flicks, he said ‘They weren't real forceful, she could have hit him much harder if she wanted to’.<sup>19</sup> Apart from ‘a little graze’ on the horses back leg, Private Banker was not injured and required no veterinary assistance.<sup>20</sup>
- [22] Following the evidence of Mr Chapman, Mr Burns and Mr Hedges, there was a lengthy exchange between the stewards and the applicant during which the applicant made a number of statements.<sup>21</sup>
- [23] She was not represented at the stewards’ inquiry, but the essence of her claim seemed to be that the way in which she used the whip on this occasion equated with the way in which lunging whips or buggy whips are regularly used at racetracks. She has grown up with stockwhips and does not use such a whip to ‘flog’ a horse, they are used simply to create a noise used as guidance.
- [24] She said that she was unaware of the presence of a lunging whip at the pool. A lunging whip, she said does ‘the exact same thing’ as a stockwhip. She accepted that she had ‘flicked the horse around the legs’ and did not dispute making contact with the horse in doing so.
- [25] Dr Emma Silvestri is a registered veterinarian employed by the respondent. Her evidence included the following statements.<sup>22</sup>

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<sup>15</sup> Transcript of Stewards Inquiry 23/02/2023 recording #1 lines 819-829

<sup>16</sup> Transcript of Stewards Inquiry 23/02/2023 recording #2 line 177

<sup>17</sup> Transcript of Stewards Inquiry 23/02/2023 recording #2 lines 177-181

<sup>18</sup> Transcript of Stewards Inquiry 23/02/2023 recording #2 lines 323-324

<sup>19</sup> Transcript of Stewards Inquiry 23/02/2023 recording #2 lines 231-232

<sup>20</sup> Transcript of Stewards Inquiry 23/02/2023 recording #2 lines 235-248

<sup>21</sup> Transcript of Stewards Inquiry 23/02/2023 recording #2 lines 238-580

<sup>22</sup> Transcript of Stewards Inquiry 23/02/2023 recording #2 lines 718-806

- Due to thin skin sensitivity, horses would react to both a stockwhip and a lunging whip.
- The weight and design of a stockwhip is likely to induce some discomfort and potentially pain, depending on how long and hard the contact with the horse.<sup>23</sup>
- Given the stiffness and weight of the stockwhip, she thought that it would cause more pain and discomfort if the horse were struck with it, then would a strike with a lunging whip.
- A lunging whip is used to tap a horse, whereas a stockwhip, by its traditional use, is used to make a cracking sound for the purpose of moving cattle, not to train or encourage your horse to move.<sup>24</sup>
- Having read the witnesses statements, “the way the whip was used on Private Banker does demonstrate an act of cruelty - intentionally causing pain or discomfort - between the horse - the witness described it as being flicked between the horses back leg, which is likely to cause pain to be inflicted on the whole skin of the horses back legs, which is quite sensitive at the best of times”.<sup>25</sup>
- The use of the stockwhip compromised the welfare of the animal in three ways.
  1. The use of the whip to get the horse to move forward exacerbated the horse's fear of going into the water.
  2. Based on the witnesses’ statements, the continued pressure applied to the already fearful horse resulted in the display of behavioural signs indicative of significant fear in the horse, specifically the horse bucking, rearing and kicking out several times, resulting in the horse falling.
  3. Based on the witnesses’ statements, further repeated use of the whip following the horses first fall continued to cause the horse to display a fear response.....ultimately causing the horse injury when it fell again.

#### **FURTHER EVIDENCE**

- [26] On the hearing of this appeal, the panel heard evidence from Dr David Hodge, a registered veterinarian who has also worked as a Stockman who has considerable experience in the use of stockwhips. He disagrees with the opinions expressed by Dr Silvestri.<sup>26</sup>
- [27] He describes a stockwhip as having at its end a thin strand of leather called a ‘fall’, finishing with a twine or horsehair ‘cracker’. Unlike Dr. Silvestri, he considers that if a horse is flicked with the end of a stockwhip, it would be unlikely to cause any discomfort or pain. Given the lightness of the material at the end of the whip, it is not possible to make hard contact whereby flicking the whip behind the horse.
- [28] He also disagrees with Dr Silvestri's opinion that a lunge whip ‘is used to tap a horse’ rather than make a cracking sound.

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<sup>23</sup> Transcript of Stewards Inquiry 23/02/2023 recording #2 lines 718-722

<sup>24</sup> Transcript of Stewards Inquiry 23/02/2023 recording #2 lines 739

<sup>25</sup> Transcript of Stewards Inquiry 23/02/2023 recording #2 lines 776

<sup>26</sup> Affidavit of David Hodge sworn 14 April 2023.

[29] A lunge whip is clearly designed to enable it to be flicked. In his experience, it is used to flick at the rear of horses to encourage them to move in a particular fashion - whether into starting barriers or onto ramps.

[30] The use of a whip is a means of extending the reach of the arm, enabling contact with the rear of the horse, whilst at the same time maintaining a safe distance.

[31] Critically, Dr Hodge states that the use of a lunge whip in a flicking motion would be no less irksome to a horse than flicking with a stockwhip. Flicking a horse with the soft end of a stockwhip would trouble it less than flicking it with a lunge whip. Unlike Dr Silvestri, he considers that flicking and the associated noise, although annoying to the horse, would be unlikely to cause anything more than mild discomfort.<sup>27</sup>

[32] Dr Hodge further deposes: -

In my professional opinion whips of various types when used by experienced horse handlers are an appropriate educational tool.

I have observed horses and other animals being flicked around the hind legs with stockwhips. The purpose of so doing is to make a noise through the flicking action and also to make minimal contact with the hind legs so that the horse associates the cracking noise with the object which is making contact with their hind legs. The contact with the hind legs is an irritant to the animal, not an action which inflicts pain or injury. The reasoning behind flicking on the hind legs is to trigger the natural reaction of the horse to move forward, mainly away from the force of the noise or irritation.

A lunging or buggy whip can be used for exactly the same purpose. In my professional opinion, because of the material out of which a lunging whip is made, it would be more likely to sting the hind legs of a horse than the twine at the end of a stockwhip.

Horses rearing up is not an unusual occurrence. It is often seen when horses are being led around a parade ring at a racecourse and the adrenaline in the horse starts enlivening the horse. In a situation where the horse is not comfortable with entering a pool, there is likely to be a surge of adrenaline and the resultant rearing up.

Thoroughbred horses are invariably shod with metal racing plates which on concrete or bitumen surfaces, or on rubber belting, are slippery. Occasionally horses will slip over on such surfaces if they go up on their hind legs.

I note that padded whips, in the nature of riding crops, are permitted to be used subject to limitations on the number of strikes with the whip, under the Australasian Rules of Racing. The use of the whip in the circumstances of a thoroughbred race is

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<sup>27</sup> Affidavit of David Hodge sworn 14 April 2023 paragraph 12-15

another example of whips being used to create a noise or irritant, with the consequential flight reaction from the horse.

In my professional opinion, when the events involving Ms Forster at the equine pool are compared with the legitimate and permitted uses of whips in thoroughbred and harness racing, her actions are not actions of cruelty. In my interpretation of the evidence in the transcript, there was no maltreatment of Private Banker.<sup>28</sup>

- [33] The panel has before it an affidavit from another veterinarian, Dr Emma Bishop who examined Private Banker on the afternoon of the 23rd of February 2023. Thoroughbred horses, such as Private Banker, are shod with metal racing plates, which can contribute to horses slipping over on wet concrete in particular. It is a regular occurrence for her to be called, as she was on this occasion, to examine racehorses which have so fallen or grazed themselves. Many such grazes occur when horses are on wet surfaces, such as wash bays and equine swimming pools.<sup>29</sup>
- [34] Dr Bishop observed a superficial skin graze to Private Bankers left hind leg in the hock region. The horse was not lame. There were no welts or other indications on the hind legs, or any other part of Private Bankers' anatomy, to indicate that the horse had been whipped. The horse was calm and free of any indication of distress - 'tucking into his night food and displaying normal behaviours'. There was nothing to indicate that the horse was unfit for trackwork on the following morning.
- [35] Aside from the evidence of the witnesses, a number of photographs were tendered showing the pool area, including the concrete access, and showing also the use of a lunge whip to apparently flick the release of a horse at a race meeting - obviously done with the intention of encouraging persuading that horse to enter the starting barrier. Various whips, including a lunging whip and the stockwhip used by the applicant, were also tendered.

## **DISCUSSION**

- [36] The word "cruelty" under the rules is defined to include 'any act or omission as a consequence of which a horse is mistreated'.
- [37] The use of a stockwhip for the purpose of training is itself an offence under AR231(4). It does not follow, however, that the mere fact of such usage must itself constitute an act of cruelty under Rule AR231(1)(a). In many cases, if not most, the usage may well be deserving of that description, but that must be dependent upon the manner of use in the particular case. As Dr Silvestri has said, the capacity of a stockwhip to induce discomfort and potentially pain is dependent upon how long and how hard the whip makes contact with the horse.<sup>30</sup>

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<sup>28</sup> Affidavit of David Hodge sworn 14 April 2023 paragraph 19-25

<sup>29</sup> Affidavit of Dr. Emma Bishop dated 13 April 2023

<sup>30</sup> Transcript of Stewards Inquiry 23/02/2023 recording #2 line 721



- [38] On the best view of the evidence, it seems that the applicant flicked Private Banker in the region of his rear legs on about three occasions. The allegation levelled against the applicant is that the first 'strike' caused the animal to rear before landing on all four legs. A second 'strike' resulted in the horse rearing and falling onto its buttocks. The third 'strike' again caused the horse to rear and fall, and, in the process of getting up, move its leg on the ground there by removing some skin.
- [39] The requirement of mistreatment, it is argued, is met by reason of the horse 'displaying agitation, distress, fear, aversive flight behaviour, and reacting in a way that led to it sustaining injury to its hind leg'.
- [40] Mr. Murdoch KC, counsel for the applicant submits however that the allegation of 'striking' Private Banker represents an overstatement of the evidence. The witness Mr Brown spoke about flicking, 'a little flick' on the hind legs. He could say nothing as to the degree of force involved. Mr Brown himself used the so-called buggy whip (lunge whip) to give the horse 'a couple of little flicks as well to sort of try to straighten it up, to get it to go forward'<sup>31</sup> - conduct apparently countenanced by the stewards, certainly in the pool area and at the barrier, to encourage the movement of horses.
- [41] Mr. Hedges, the other witness present, described only a 'couple of flicks around the back legs'. Moreover, as the evidence of Mr Brown makes clear, efforts were made to ensure the horse had calmed or settled before any resumed attempt to have him enter the pool.
- [42] It is argued for the applicant that it cannot be inferred that the conduct of the horse, which had demonstrated a similar reluctance to enter the pool on two prior occasions, can be attributed to the actions of the applicant.
- [43] Both Dr Silvestri and Dr Hodge were cross-examined before the panel. Dr. Silvestri's opinions are based only on the statements of the witnesses without having seen, as Dr Hodge had, the more expansive accounts given orally at the stewards hearing. Dr Hodge clearly had a greater understanding of the structure and use of a stockwhip than did Dr Silvestri. Dr Silvestri, when comparing a stockwhip with a lunge whip said that due to its weight and design, the stockwhip is likely to induce some discomfort and potential pain, although that would be dependent upon 'how long and how hard the whip made contact with the horse'. There is nothing in the evidence to suggest that the weight or thickness of the stockwhip made any contact with Private Banker. Dr Bishop's evidence would indicate otherwise.
- [44] The evidence of Dr Hodge is that the flicking of a horse at the end of the whip would be unlikely to cause any discomfort or pain. Moreover, given the lightness of the material at the end of the whip, it would not be possible to make hard contact by flicking the whip behind a horse.
- [45] The panel accepts the evidence of Dr Hodge as summarized above.

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<sup>31</sup> Transcript of Stewards Inquiry 23/02/2023 recording #1 lines 714-716

- [46] On the evidence before the panel, the use of a lunging whip in this manner is permissible on racetracks.
- [47] As indicated above, we have photographs of such a whip being used by a race day starter to flick horses around the rear legs. Dr Silvestri has expressed her personal concerns that that is so, and no doubt the excessive or otherwise inappropriate use of such a whip could result in a charge of cruelty. There is no reason to doubt the assertion of the applicant at the stewards' inquiry that the lunge whip can do 'the exact same thing' as the stockwhip. Clearly it is the manner of use that is critical.
- [48] The burden of establishing the guilt of the applicant lies with the respondent. It is for the party which brings the charge to establish that charge to the reasonable satisfaction of the panel. Given the seriousness of the charge, and its obvious consequences, the standard of proof is high. Although the standard does not equate to that required in criminal proceedings, findings adverse to the applicant should not be reached on the basis of evidence that is other than sensible 'clear and probative'.
- [49] Mr Ryan KC, who appears for the respondent, argues that the inference to be drawn in this case is that the behaviour exhibited by Private Banker is attributable to the actions of the applicant with the stockwhip. He relies on the opinions expressed by Dr. Silvestri and the inferences which she has drawn from her reading of the statements.
- [50] There is evidence of similar behaviour by Private Banker on previous occasions and again on 23 February 2023 when the horse started to walk into the pool and prior to any whip being used.<sup>32</sup> There were no marks which might indicate that Private Banker has been whipped or had otherwise suffered forceful use of a whip of any kind. There is moreover the persuasive evidence of Dr Hodge set out above.
- [51] Weighing the several matters, the panel is not satisfied to the requisite standard that the conduct of the applicant in this case constitutes "cruelty" for the purposes of AR 231(1). It follows that guilt of the applicant in relation to charge two has not been established to the Panels satisfaction.

## **PENALTY**

### **Charge three**

- [52] The purpose of imposing penalty in proceedings such as these, is not to punish the offender. Relevant to the determination of penalty for a breach of this rule are considerations of specific and general deterrence, as well of course as the maintenance of standards of integrity and animal care in the thoroughbred code by enforcement of the rules of racing.
- [53] So far as specific deterrence is concerned, the applicant has entered a plea of guilty to the charge and has no prior breaches of a similar nature. She has been a licensed trainer for

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<sup>32</sup> Transcript of Stewards Inquiry 23/02/2023 recording #1 line 526

more than 20 years and a number of very favourable references have been tendered on her behalf. They speak highly of her commitment to horses under her care and regard in which she is held in the racing industry. Some of those statements go beyond being mere personal references. Ms Mary Collier, for example, has a long association with the racing industry. She considers that the applicant's treatment of horses in her care to be exemplary. She is 'regarded nationwide as a trainer whose entire life is dedicated to the welfare and love of her thoroughbreds'.

- [54] Evidence of good character may be relevant in several ways. One such potential relevance lies in addressing the question of whether someone of such character would engage in conduct of the nature that is alleged against her. Another relevance relates to the issue of penalty.
- [55] The applicant's assertion that she was unaware that stockwhips could not be taken to a racecourse seems to have been accepted at the stewards' inquiry and there is no reason why her claim in that regard should now be doubted. This was not a case of any deliberate flouting of the rules or in which the whip was intended for use in harming the horse Private Banker.
- [56] In relation to general deterrence, the prohibition against the use of a stockwhip reflects the obvious need to regulate the use of a device which has the potential to cause real harm. Consistent with the panel's determination in respect of charge two, that potential in this case did not become a reality and the absence of any finding of cruelty requires that the penalty imposed for charge three should be revisited. Although the penalty imposed should not be more than is reasonably necessary to deter any future contravention of the rule by others, the interests and integrity of the racing industry require that a clear message be sent in relation to the breach of a rule designed to maintain that integrity and ensure the welfare of horses involved in that industry.
- [57] There is a relationship between charges one and three, constituting as they do a course of conduct, and issues of totality do arise in determining penalty. The panel considers that a fine of \$6 000 to be appropriate in respect of charge three.

## **ORDERS**

- [58] **Charge Two** - AR 231(1) the decision of the panel is to set aside the racing decision and substitute a decision of not guilty.
- [59] **Charge Three** - AR231(4) the decision of the panel is to vary the racing decision and substitute a decision of a fine of \$6,000 in lieu of the original penalty of four month disqualification.