

TRAINING DISPUTES TRIBUNAL

MR B. FORREST, Chairman

HEARING

TUESDAY 18TH OCTOBER 2022

DECISION

MONDAY 24TH OCTOBER 2022

RICHARD CULLY

- AND -

GRAEME ROGERSON

DECISION AND REASONS

CHAIRMAN: In these proceedings trainer Richard Cully has made a claim against Graeme Rogerson, managing part owner of the horse Capellani for unpaid training fees of \$654.50.

Cully has lodged a Notice of Election of Hearing pursuant to the **Trainer and Owner Reform Rules** (TOR Rules) whereby this Tribunal has jurisdiction to hear and determine the dispute.

In February 2022 Rogerson sent two horses Capellani and Pierian Spring to Cully to train. Pierian Spring had three starts, one placing for \$8,185 prizemoney before being sold in April 2022 at an online auction.

Capellani had five starts for Cully, two wins and two placings earning \$33,130 prizemoney. The agreed training fee for Capellani was \$85 per day plus GST and disbursements.

On 31st May 2022 Capellani ran third in a hurdle race at Hamilton.

Cully said Rogerson then informed him that he and his partner had decided to sell the horse. According to Cully he verbally agreed with Rogerson that he would continue to train the horse until the sale to enable it to retain fitness in the event it was unsold.

Capellani was sold at an Inglis online auction on 8th June 2022. Cully's brother bought the horse at the reserve price of \$15,000 set by Rogerson. Cully said he had not been told the reserve price prior to the sale.

For his part Rogerson disputed the Cully version of arrangements for the horse post the Hamilton race and prior to sale. He has refused to pay the account for the training fees in dispute.

Rogerson said that after the Hamilton race he told Cully that he and his partner were finished with the horse and to take it out of work.

Cully denies that he was given this instruction.

It is noted that the day after the Hamilton race Cully messaged Rogerson.

“Capellani update from Richard Cully – 1st June 2022

Hey Folks,

I just want to give you an update on Capellani after his run at Hamilton yesterday. Originally he pulled up really good after the run, but when he got home he was pretty reactive when flexing his near front fetlock joint. We hosed it and he was down the lake this morning, we have given him some bute so we will just have a look at it in the next few days, hopefully it comes down but if not we will have to have a look at it, he was pretty tender on it and pretty tender on it again this morning so we will just see how he is in the next couple of days, I will be in touch again soon.

Thanks folks.”

In the material before the Tribunal there is no record of any immediate response to that message.

Later, on 6th July 2022 after receiving the account in dispute, Rogerson replied.

“I was disappointed to receive the June account with the daily charge at \$85.00. After his race on 31st May you said the horse pulled up not 100%. If so the horse would not have been in full work?”

The message went on to query the claim the horse was sore and the transparency of the selling process.

CONSIDERATION:

After considering the written material and the oral evidence, I was left with the impression that in some respects the oral evidence was coloured by an inappropriate message sent by Cully to Rogerson, a luminary in New Zealand racing, on August 5, 2022.

That said, and after having heard the conflicting evidence of the arrangements post the

Hamilton race, I am not persuaded that Cully was given clear instructions to take the horse out of work and therefore be denied training fees for the week in question.

I accept that the horse was recovering from the effects of the Hamilton race and was not in full work. Services provided for Capellani during that week included medication, feed, stabling and light exercise. I accept the claim for payment as valid.

The Tribunal orders that:

Graeme Rogerson pay to Richard Cully

1. \$654.50 training fees
2. \$250.00 filing fee (TOR Rule 8(6) (h))

In total the sum of \$904.50 to be paid within 14 days of the date of this decision.

Appearances:

Richard Cully, assisted by Andrew Nicholl

Graeme Rogerson