

IN THE MATTER OF THE *PREVENTION OF CRUELTY TO ANIMALS ACT*,
R.S.B.C. 1996, c. 372
ON APPEAL FROM A REVIEW DECISION OF THE BC SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS CONCERNING THE SEIZURE OF
TWO HORSES

BETWEEN:

TANYA SARKOZI

APPELLANT

AND:

BRITISH COLUMBIA SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS

RESPONDENT

DECISION

APPEARANCES:

For the British Columbia Farm Industry
Review Board:

Neil Turner, Presiding Member
David Zirnhelt, Member

For the Appellant:

Tanya Sarkozi

For the Respondent:

Andrea Greenwood, Counsel

Date of Hearing:

March 20, 2023

Location of Hearing:

Teleconference (Zoom)

A. Overview

1. This is an appeal pursuant to s. 20.3 of the *Prevention of Cruelty to Animals Act, R.S.B.C. 1996, c. 372* (the *PCAA*) related to the seizure of two horses, Diamond and Gypsy (the Animals) from the Appellant, Tanya Sarkozi, at a boarding facility located in Mission, BC.
2. The Appellant is appealing the February 13, 2023, review decision issued under s. 20.2(4)(b) of the *PCAA* by Marcie Moriarty, Chief of Protection and Outreach Services for the British Columbia Society for the Prevention of Cruelty to Animals (the Society).
3. Section 20.6 of the *PCAA* permits the British Columbia Farm Industry Review Board (BCFIRB), on hearing an appeal with respect to animals, to require the Society to return the animals to their owner with or without conditions or to permit the Society, in its discretion to destroy, sell or otherwise dispose of the animals. The Appellant in this case is seeking the return of the Animals.
4. On March 20, 2023, a BCFIRB hearing panel (the Panel) held a hearing via video conference (Zoom). The hearing was recorded.
5. The Appellant was not represented by counsel. The Appellant gave evidence on her own behalf and called one witness, P.B.
6. The Society was represented by counsel and called three witnesses: S.C., Special Provincial Constable (SPC) Meyers and Dr. Augusta Jane Westendorf.

B. Material Admitted on this Appeal

7. The Panel identified all the documents received by BCFIRB in advance of the hearing, as exhibits. The record comprised Exhibits 1-14 and is attached as Appendix A to this decision.

C. History Leading to Seizure of the Animals and the Day of Seizure

8. Prior to the seizure, the Society received several complaints concerning the Appellant's care for the Animals dating from 2018 to 2022.
9. On February 22, 2018 the Society received a call that the Animals, then located at a property in Maple Ridge, were thin and "not right" in appearance. The complainant noted that that one of the horses was possibly limping, and that one of the horses was tangled in a blanket.

10. On February 23, 2018 the Animals were viewed by Animal Control Officer (ACO) Robert Westland. The horse named Diamond had hind hooves that were noted to be growing flat and starting to curl up on the edges. Diamond's front left shoe was also missing. The Appellant advised ACO Westland that she had made an appointment with a farrier on March 2, 2018. ACO Westland issued A Notice of Distress to the Appellant, to address these concerns.
11. On March 3, 2018, ACO Westland re-attended the Maple Ridge property and confirmed that the Appellant had complied with the notice issued on February 23, 2018.
12. On March 4, 2020, the Society received a complaint that the horses had been abandoned or were being kept illegally at a property in Surrey, BC. The complainant noted that the Appellant had been evicted from the property approximately six months prior and that the horses were dirty and underweight. The complainant also noted that she could not verify whether the horses were being provided food or water.
13. On March 5, 2020, Animal Protection Officer (APO) Chelsea Blackwell attended the Surrey property to inspect the Animals and found them to be in adequate physical condition.
14. On August 30, 2022, the Society was contacted to attend Surrey, BC after it received another complaint that the Appellant was not providing adequate care to the Animals at the Surrey property. The complainant had assumed care of the Animals in the interim. After an investigation it was determined by the Society that the Animals did not meet the definition of distress.
15. On September 29, 2022, the Society received a call of concern regarding two horses at Dewdney Trunk Road, Maple Ridge. The complaint was regarding the Animals who were now being kept at a new property in Maple Ridge. The complainant advised that they were concerned that the Animals were not being tended to properly, as the owner had been evicted. The complainant further noted that the Animals were not properly contained due to a downed fence.
16. ACO Kennedy Buckland and ACO Keith Griffiths attended at the Maple Ridge property and were informed that the RCMP had attended due to the Animals being on the roadway. The Animals were returned to the paddock. At that time the Animals were noted as having adequate body condition, but one of the Animals (Diamond) was noted to have overgrown hooves.
17. ACO Griffiths and Buckland located and spoke to the Appellant regarding her living situation and her care for the Animals. The ACOs pointed out the issues with Diamond's hooves and the Appellant stated that she could not get a farrier out due to her own personal circumstances. The Appellant also advised that she would be

leaving the property in the next few weeks and was planning to move the Animals to Langley.

18. On October 4, 2022, the Society was informed that the Animals had once again escaped their paddock during the evening of October 3, 2022, but had been returned to the property. ACO Buckland spoke to the landlord who advised that he had demanded that the Appellant remove the Animals from the property by 9:00pm that evening.
19. On October 5, 2022, ACOs Buckland and Griffiths attended the Maple Ridge property as the Appellant had failed to remove the Animals by 9:00 pm the day before in compliance with the landlord's demand. The horses were surrendered by the landlord as the Appellant had failed to provide care for the Animals for some time and the landlord was no longer able or willing to do so on her behalf.
20. The Appellant arrived on the property while the ACOs were in the process of loading the Animals. The Appellant began screaming and the RCMP were called. It was determined by the RCMP that the Appellant and the Animals were not supposed to be at the property and the Appellant was detained by the RCMP. A Notice of Disposition was given to the Appellant and ACO Buckland informed her of the disposition instructions. The Animals were removed by the ACOs and taken into the Society's custody.
21. On October 6, 2022, Dr. Amanda Gilliland (DVM) from Equine Services Ltd. conducted examinations of the Animals while they were in the custody of the Society. She determined that Diamond had moderately overgrown hooves, a severe dental condition, and superficial wounds caused by transport anxiety. Dr. Gilliland recommended that Diamond's hooves be trimmed within 14 days and that Diamond should be administered deworming medication. Dr. Gilliland further recommended that Diamond should have a dental procedure within 30 days.
22. Dr. Gilliland noted that Gypsy had mildly overgrown hooves, but was unable to conduct a full dental exam due to Gypsy's demeanor. She recommended Gypsy's hooves be trimmed within one month and that she be administered deworming medication. Dr. Gilliland further recommended that Gypsy should have a dental exam by fall/winter.
23. On October 20, 2022, the Appellant signed an agreement with the Society to return the Animals to her care. The agreement outlined the Appellant's obligation to pay the costs incurred by the Society while the Animals were in the care of the Society, and detailed the terms of ongoing care for the horses, including veterinary care for Diamond's dental condition within 30 days of the date of the agreement.
24. On October 28, 2022, SPC Sharlene Syer attended at the Maple Ridge property prior to the return of the Animals to the Appellant. The Appellant confirmed that the Animals would be boarded at a new location in Mission, BC. SPC Syer confirmed

that the Appellant had paid the required costs and then issued a Notice of Distress which instructed that the Appellant provide adequate care for the Animals as outlined in the return agreement.

25. On December 1, 2022, SPC Syer contacted the Appellant to confirm that the Animals had received the appropriate veterinary care for the deworming and dental concerns. The Appellant informed SPC Syer that she had made an appointment with a veterinarian for the following week and that she would contact SPC Syer at a later time to provide details of the appointment.
26. On December 10, 2022, SPC Syer phoned the Appellant and the voicemail message from the Appellant stated that she had misplaced her phone.
27. SPC Syer then contacted S.C., the owner of the Mission property. S.C. informed SPC Syer that the Appellant had not been observed at the property in several weeks and that she was concerned about upcoming payments for boarding. S.C. informed SPC Syer that no veterinarian had come to the property to treat the Animals and that she had assumed care of the Animals.
28. Later that day SPC Syer received a text message from the Appellant stating that she had scheduled a veterinary appointment for the Animals for January 6, 2023.
29. On January 17, 2023, SPC Syer received a voicemail message from the Appellant stating that she had switched veterinarians to Golden Ears Equine Veterinarian and had an appointment for 3:30 pm that day at the Mission property.
30. On January 18, 2023, SPC Syer contacted Dr. Stephanie Jeanneret (DVM) at Golden Ears Equine Veterinarian, who confirmed that she had attended at the Mission property for the scheduled appointment on January 17, 2023. Dr. Jeanneret informed SPC Syer that the Appellant did not attend the appointment and that she was unable to contact the Appellant and as such no veterinary matters were addressed at the visit. SPC Syer phoned the Appellant and left a voicemail message asking her to contact SPC Syer regarding missing the veterinarian appointment.
31. Later that day SPC Syer received a call from S.C. that the Appellant had failed to provide feed or regular care for the Animals as per the "Self Boarding" agreement. S.C. stated that she was providing feed, water and care, at her cost, to ensure that the Animals were not in distress, and that she had provided the Appellant notice to remove the Animals from her property, due to the Appellant's default on the agreement. SPC Syer telephoned S.C. to obtain consent to attend the Mission property to leave a notice for the Appellant to contact the Society.

32. SPC Syer then attended at the Mission property and was shown by S.C. the paddock containing the Animals where a notice was posted requesting the Appellant to contact the Society within 24 hours. In addition to the posting of the notice at the paddock SPC Syer sent the Appellant a text message advising her that a notice had been posted and requesting a response from the Appellant.
33. On January 19, 2023, SPC Cassandra Meyers attended at the Mission property. She met with S.C. and observed that the notice placed 24 hours prior by SPC Syer was still in place. S.C. also confirmed that the Appellant had not attended the property in the previous 24 hours, and had not contacted her.
34. On January 20, 2023 SPC Meyers filed an Information to Obtain a Search Warrant (ITO) and a warrant was issued to relieve the Animals' distress. The warrant was subsequently executed that day by SPC Meyers and SPC Syer with RCMP in attendance for support. The Appellant and S.C. were also present at the time of the seizure.
35. At the time of the seizure Dr. Augusta Jane Westendorf (DVM) was asked to examine the horses and determined that Diamond's teeth remained unaddressed and that his dental condition was poor with missing teeth, a large wave and sharp points. She further noted yellowing of his gums indicating possible liver dysfunction, toxicity, or poor nutrition. His hooves also remained in poor condition and the inner structure was collapsed / unmaintained, likely caused by a previous abscess in his foot. Diamond's body condition had also deteriorated and he was noted to have a 4/9 Body Condition Score.
36. Dr. Westendorf noted that Gypsy was found to have similar hooves as Diamond, as well as some problematic dental concerns in her back molars, and ulcers on her tongue. Diarrhea (possibly parasite related) was also noted in her paddock and on her tail/hind end. Both horses appeared to have lost muscling on their topline.
37. Due to the Appellant's non-compliance with the return agreement, the notice of October 20, 2022, and her ongoing inability to provide adequate care and shelter for the Animals, the Animals were determined to be in distress and were seized by the Society.

D. Review Decision

38. On February 13, 2023, Ms. Moriarty issued her review decision in which she outlined her reasons for not returning the Animals to the Appellant (the "Review Decision"). She reviewed the following documents and materials:
 - File 351051 Inspection Follow-up Details (IFD) – January 20, 2023,
 - Information to Obtain Warrant (ITO) & Attachments – January 20, 2023,
 - Notice of Disposition – January 20, 2023,
 - Photographs of the Horses – January 21, 2023, and
 - Email submissions sent by the Appellant.

39. Ms. Moriarty was satisfied, based on the evidence, that the SPC reasonably formed the opinion that the Animals were in distress, as defined in section 1(2) of the *PCAA*, and her action to take custody of the Animals to relieve the distress was appropriate.
40. Ms. Moriarty further decided that it was not in the best interest of the Animals to be returned to the Appellant, stating in part:

“ ...multiple unrelated parties have relayed similar concerns regarding your inability to provide adequate care to the Horses. Despite multiple chances to address these concerns, you have not complied with the BC SPCA Notices or the Return Agreement. With respect to the Return Agreement, I note it was quite difficult for you to make arrangements to obtain a suitable boarding facility for your Horses....It is very disappointing to learn that, instead of using the Return Agreement as an opportunity to improve your practices and care of the Horses, you have chosen to ignore the needs of your Horses and they have, once again, been found to be in distress. Not only did you fail to address the concerns noted in the Return Agreement, the horses’ conditions actually deteriorated since the date of the agreement.”

E. Key Facts and Evidence

41. In an appeal under the *PCAA*, the Panel must determine whether the Animals were in distress when seized and if so, whether they should be returned to the Appellant. Below is a summary of the relevant materials, facts and evidence based on the parties’ written submissions and evidence presented during the hearing. Although the Panel has fully considered all the facts and evidence in this appeal, the Panel refers only to the facts and evidence it considers necessary to explain its reasoning in this decision.

Appellant’s Evidence

42. The Appellant stated that the Animals were never underweight or in distress. She agreed that the Animals hooves were a little overgrown, and noted that she had paid the costs to the Society for having them treated.
43. The Appellant stated that the third-party surrender of the Animals on October 5, 2022 by the property owner was not lawful and should not have been permitted.
44. The Appellant noted that she had rescued Gypsy and that she cared deeply for the Animals and regarded them as her children. She further noted that she had visited her horses daily and had a friend, Patti, drive her when she was not permitted to drive.
45. Under cross examination by counsel for the Society, the Appellant stated that she believed that she had prepaid for all the appropriate costs relating to self boarding

her horses with S.C. She further claimed that it was her understanding that the Self Board agreement had changed to a Full Board agreement, but did not have proof of any amended agreement to that effect.

46. She stated that other than one week in November when she was ill, she attended the property where the Animals were boarded daily. She further stated that she had a new location to board the horses that was close to where she would be living, but had no lease or proof that she had an agreement or permission to board the horses in any particular location.
47. The Appellant stated that she was unable to secure a veterinarian appointment in November and the first available date was December 6, 2022. She agreed that Diamond had not received any dental treatment, but disagreed with the body condition score described by the Dr. Westendorf.

Appellant's Witness:

P.B.

48. P.B. confirmed that she drove the Appellant to the Mission property daily to see the Animals.
49. She further confirmed that her husband operates an excavating company that provided services to S.C. at the Mission property, and that the Appellant had worked for her husband at the Mission property. P.B. stated that the Appellant's labour had been deducted from her husband's excavating invoice for the work performed for S.C. and that a corresponding amount was supposed to have been attributed by S.C. to the Appellant's boarding costs.
50. She stated that she was aware that the Appellant tried to contact a veterinarian for the Animals on several occasions. She further stated that it was her understanding that Appellant provided care for the Animals on a rotating weekly basis with S.C. in order to facilitate a full board arrangement for the Animals.
51. Under cross examination by counsel for the Society, P.B. again confirmed that there was an arrangement in place to exchange the Appellant's labour for the costs of boarding of the horses with S.C.
52. P.B. disagreed that S.C. withheld payment due to a concern with not being paid for boarding costs. She further noted that S.C. did pay in full after she threatened to place a lien on S.C.'s property for outstanding costs owed to her husband's excavating company.
53. P.B. stated that her husband had discontinued the labour deduction arrangement, and that he expected the Appellant to pay S.C. directly for any boarding costs.

54. In response to questions from the Panel, P.B. confirmed again that she provided transportation to the Appellant to see the Animals daily and that she understood that there was an alternating week arrangement in place where the Appellant would provide care for the horses one week and then S.C. was expected to care for the horses the following week. She further stated that the Appellant had attended the Mission property and visited the Animals daily regardless of the alternating week arrangement.

Respondent Witnesses:

S.C.

55. S.C. testified that she has known the Appellant from October 2022 when they entered into a self board agreement for the Animals for \$350 per horse per month. She stated she does not offer full board contracts but if the contract was for full board, it would have been \$1000 per month per horse.
56. S.C. confirmed that there was a written contract with the Appellant which was included as an exhibit in the hearing record. She confirmed that the self board contract was never converted to a full board contract.
57. S.C. stated that the Appellant provided the \$700 rent for the first month of the Contract for self-boarding the Animals and that the boarding arrangement started out fine. However, when the Appellant said that she had lost her job S.C. agreed to let the Appellant work in exchange for the cost of the rent. She also stated that P.B.'s husband paid for December 2022's rent and also for some of the days where the Appellant was not there to clean the horse stalls. She said in addition to paying the Appellant's arrears he also paid for January 2023's rent.
58. S.C. stated that beginning January 1, 2023 the Appellant failed to show up to feed or clean the stalls for longer and longer periods of time and that S.C. then had to step in and provide hay and clean the stalls for the Animals. She stated that she was fed up and either on the 12th or 13th of January 2023 they had a "blow up" disagreement where the Appellant claimed she had a full board contract and that was why P.B.'s husband was paying the rent. After that confrontation S.C. asked the Appellant to leave the property and end the boarding relationship, which the Appellant agreed to do on January 14, but never followed through.
59. S.C. stated that she withheld \$400 from a payment owed to P.B.'s husband to ensure that she had money to look after the Animals until they left the property. Once the Animals were seized she paid the outstanding amount.
60. S.C. stated that she attempted to contact the Appellant and had even agreed to help haul the horses to a new location, but she was unable to connect with the Appellant prior to the seizure.

61. S.C. stated that at some point in mid January 2023 she received a call from the Society and she explained that she had not seen the Appellant come to the property for days. She further advised that she was not prepared to feed and care for the Animals for free.
62. S.C. stated that she did not prevent the Appellant from coming to the property and that she had never told the Appellant that she could not come to the property. She stated that after the seizure she had offered to meet the Appellant at the police station to return some of her property, as the Appellant had been issued a “No Go” order for the property by the police.
63. In response to questions from the Panel, S.C. stated that she was aware that the Appellant had an agreement with the Society and that there were conditions that had to be met in that agreement.
64. In cross-examination S.C. confirmed that she did receive \$400 from the Appellant and that she did provide the Animals food and water.

Dr. Augusta Jane Westendorf

65. Dr. Augusta Jane Westendorf testified that she holds a Doctor of Veterinary Medicine (DVM) from the Western College of Veterinary Medicine, a Masters in Science in equine reproductive pathology and that she previously held a rotating equine internship at Moore Equine in Calgary, which had ended in June 2022. She currently works at Total Equine Veterinary Services and is licensed to practice Veterinary medicine in British Columbia. The Panel accepted Dr. Westendorf as an expert witness in the field of veterinary medicine.
66. Dr. Westendorf stated that based on her examination of the Animals during the seizure and her review of Dr. Gilliland’s report on the condition of the horses dated October 14, 2023, she could see no improvements to the condition of the Animals other than the hooves had been trimmed, but still needed further trimming.
67. She stated that Diamond’s condition had worsened since Dr. Gilliland’s report from a body condition score of 5/9 to 4/9 to reflect a loss of muscle and ribs showing. She stated that Diamond’s worsening body condition was most likely related to the horse’s ongoing dental condition and its inability to chew properly. She stated that Diamond will require multiple procedures every 2-3 months to correct these dental concerns over the next 1 to 2 years. These procedures are required to allow the horse’s jaw to move and chew correctly.
68. Dr. Westendorf agreed with the recommendations in Dr. Gilliland’s report, including the treatments and timing of those treatments.

69. Dr. Westendorf stated that typically Equine Veterinary clinics are not busy in November and December and her practice usually has a discounted rate for dental work at that time.
70. Dr. Westendorf stated in her opinion that both of the Animals were in distress on the day of the seizure and her examination.
71. In response to the Appellant's cross examination Dr. Westendorf stated the Diamond's teeth did show some neglect in care and that after notice was provided to the Appellant to treat the dental concern, she would have been satisfied if that treatment was completed within a week.
72. In response to questions from the Panel, Dr. Westendorf explained that the "Ramping" dental condition she observed in Diamond was likely something that was a result of several years of not receiving the appropriate dental treatment.

Special Provincial Constable (SPC) Cassandra Meyers

73. In her evidence SPC Meyers described the history of complaints related to the Animals as well as the events leading up to and including the day of the seizure as set out in detail at section C of this decision above. SPC Meyers was in attendance for the events associated with the seizure and was familiar with the history as a result of reviewing the Society's records and her interactions and discussions with the other individuals involved.
74. During cross examination SPC Meyers stated that she was unsure if the condition of the Animals hooves were preventing them from walking, but she did believe there was a lack of good husbandry.

F. Analysis and Decision

75. Part 2.1 of the *PCAA* establishes the standards of care for animals and establishes a duty on those responsible for the animals to ensure those standards are met:

- 9.1** (1) A person responsible for an animal must care for the animal, including protecting the animal from circumstances that are likely to cause the animal to be in distress.
- (2) A person responsible for an animal must not cause or permit the animal to be, or to continue to be, in distress.

11 If an authorized agent is of the opinion that an animal is in distress and the person responsible for the animal:

- (a) does not promptly take steps that will relieve its distress, or
- (b) cannot be found immediately and informed of the animal's distress,

the authorized agent may, in accordance with sections 13 and 14, take any action that the authorized agent considers necessary to relieve the animal's distress, including,

without limitation, taking custody of the animal and arranging for food, water, shelter, care and veterinary treatment for it.

76. The definition of “distress” provides:

1 (2) For the purposes of this Act, an animal is in distress if it is

- (a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment,
 - (a.1) kept in conditions that are unsanitary,
 - (a.2) not protected from excessive heat or cold,
- (b) injured, sick, in pain or suffering, or
- (c) abused or neglected.

77. We have also proceeded on the basis that the Appellant has an onus to show that the remedy they seek (return of the Animals) is justified. The first issue to consider is whether the Animals were in distress at the time of seizure. Depending on the answer to that question, the next issue is to decide whether to return the Animals or whether doing so would return the Animals to a situation of distress.

78. The Appellant submits that the condition of the Animals is not as bad as the Society claims. She further suggests that both equine veterinarians Dr. Gilliland and Dr. Westendorf’s assessments were incorrect on the body condition scoring, while agreeing to the need for dental treatment, regular hoof trimming and deworming. The Appellant admits that she is challenged with providing and maintaining appropriate boarding and care for the Animals, which is evident from the need to seek 4 locations for boarding the Animals over a 5-year period.

79. The Society submits that the Appellant was given several opportunities to provide adequate and appropriate care for the Animals, under very specific requirements that were provided in both the return agreement and in the subsequent Notice of Distress. However, the Appellant failed to follow the conditions and made excuses and caused delays beyond the agreed to timelines. The Society further suggests that these delays led to unnecessary pain and suffering of the Animals, specifically ulcers, dental pain, and pain due to lack of appropriate and timely care of their hooves. The Society also argues that the condition of the Animals, after two separate veterinarian examinations, indicated that the Animals had diminished muscle tone and were in fact in a state of worsening condition.

80. While the Appellant may have at times in the past been able to provide food, water and attention that resulted in adequate care, it is clear from the most recent boarding location and the testimony of S.C., that there were challenges in providing care and appropriate amounts of food prior to the seizure.

81. Furthermore, what is clear from the evidence is that the Appellant was unable to follow through with the required treatments for care as prescribed by Dr. Gilliland and agreed to by the Appellant, and as a result the Animals, which were returned to the Appellant under a Notice of Distress, remained in distress up to the seizure due to a lack of timely and appropriate treatment.
82. Based on all of the evidence, the Panel finds that the Animals were deprived of the necessary veterinary care, specifically dental treatment and hoof care, and in the absence of adequate care, were in a state of physical distress that resulted in pain and sickness. As a result, the Panel finds that the Animals were in distress as defined by s. 1(2) of the *PCAA*, and that the seizure was necessary to relieve them of that distress.
83. Having determined that the seizure of the Animals was justified, the Panel must now turn to the question of whether it would be in the best interest of the Animals to be returned to the Appellant. In doing so, the Panel is guided by the courts, which considered this question in *Eliason v BCSPCA*, 2004 BCSC 1773. In that case, Mr. Justice Groberman (as he then was) stated:

The scheme of the Act clearly is designed to allow the Society to take steps to prevent suffering of animals, and also to allow owners of animals to retrieve them, or have the animals returned to them, if they are able to satisfy the Society that the animals will be taken care of.
84. In *Brown v BC SPCA*, [1999] B.C.J. No. 1464 (S.C.) the court explained:

The goal and purpose of the act is explicit in its title. It would be unreasonable, in my view, to interpret the Act as the Plaintiff's counsel suggests. In the interest of preventing a recurrence of the cause or causes leading to the animal being in the distress in the first place, the court must be satisfied that if the animal is returned to its owner, it will remain [in] the good condition in which it was released into its owner's care.
85. The question at this stage is whether the Appellant is capable of providing adequate care for the Animals. The onus is on the Appellant to prove the return of the Animals is in their best interests and to explain what, if any, changes have been made or will be made to prevent them from again being abandoned or otherwise ending up in a state of distress.
86. The Appellant had her Animals seized previously by the Society as they were determined to be in distress. They were returned to her with very clear requirements as set out in the return agreement.
87. That agreement outlined specific treatments and timelines for that care to be provided. The Appellant did not follow through with the treatments according to the timelines, even with the Society following up to keep her on track.

88. S.C.'s evidence with respect to the difficulties that she experienced receiving adequate payment and ensuring that the timely care, cleaning and feeding of the Animals was being provided by the Appellant was clear and credible. It was further supported by the evidence provided by SPC Meyers with respect to the struggles the Appellant had previously experienced in providing proper boarding for the Animals which led to repeated complaints to the Society.
89. Given the Appellant's testimony, the Panel is not convinced that if the Animals are returned to the Appellant that she would ensure that they receive the proper veterinary attention when required. Furthermore, the Appellant has failed to provide any convincing evidence to establish that her circumstances have materially changed during the appeal period. Her vague plan with respect to a new boarding opportunity for the Animals, which is not supported with any evidence and lacks in detail, is not enough to convince this Panel that it would be in the best interests of the Animals to be returned to her and the Panel finds they would be at a very real risk of falling back into distress if they were.

G. Costs

90. Section 20 of the *PCAA* states:

20 (1) The owner of an animal taken into custody or destroyed under this Act is liable to the society for the reasonable costs incurred by the society under this Act with respect to the animal.

(2) The society may require the owner to pay all or part of the costs, with or without conditions, for which he or she is liable under subsection (1) before returning the animal.

(3) Subject to subsection (4), the society may retain the proceeds of a sale or other disposition of an animal under section 17 or 18.

(4) If the proceeds of a sale or other disposition exceed the costs referred to in subsection (1), the owner of the animal may, within 6 months of the date the animal was taken into custody, claim the balance from the society.

(5) Payment of costs under subsection (2) of this section does not prevent an appeal under section 20.3.

91. Section 20.6(c) of the *PCAA* provides that on hearing an appeal the board may "confirm or vary the amount of costs for which the owner is liable under section 20 (1) or that the owner must pay under section 20 (2)".

92. The Society is seeking costs as follows:

(a) Veterinary costs:	\$949.12
(b) Hauling Costs	\$281.60
(c) SPCA time to attend seizure:	\$82.17
(d) Housing, feeding and caring for the Horses:	\$4,672.00
(e) Total:	\$5,984.89

93. On the matter of costs, the Society's submissions provide detailed cost accounting, including invoices for veterinary care and detailed estimates on the daily operating costs associated with the care of the Animals. The calculation of these estimates has been reviewed and supported in previous appeals.

94. The Appellant questioned the calculation of the total number of days and the determination of the housing, feeding and caring costs.

H. Order

95. The Panel finds that the Animals were in distress, that their removal was appropriate and that it is likely and foreseeable that they would return to situations of distress if returned to the Appellant. Consequently, and pursuant to s. 20.6(b) of the *PCAA*, the Society is permitted, in its discretion, to destroy, sell, or otherwise dispose of the Animals.
96. The Panel further finds that the Society's costs are reasonable, and confirm, pursuant to sections 20(6)(c) of the Act, that the Appellant is liable to the Society for **\$5,984.89**.

Dated at Victoria, British Columbia this 3 day of April 2023.

BRITISH COLUMBIA FARM INDUSTRY REVIEW BOARD

Per:



Neil Turner, Presiding Member



David Zirnhelt, Member

Appendix “A”

Exhibit #	Date (Received)	Received from	Document
Exhibit #1	Feb 13, 2023	BCSPCA	Sarkozi Decision Letter – February 13, 2023
Exhibit #2	Feb 17, 2023	Appellant	NOA – Sarkozi
Exhibit #3	Feb 22, 2023	BCFIRB	NOA Process Letter - Sarkozi
Exhibit #4	March 6, 2023	BCSPCA	Sarkozi v BCSPCA - Society Disclosure and Witness List
Exhibit #5	March 6, 2023	BCSPCA	BCSPCA Document Disclosure Tabs 1-35 - Redacted
Exhibit #6	March 6, 2023	BCSPCA	Video -Diamond and Gypsy at Slatford
Exhibit #7	March 10, 2023	Appellant	Appellant - Initial Submissions (Bookmarked)
Exhibit #8	March 10, 2023	Appellant	S.C. Invoice
Exhibit #9	March 15, 2023	BCSPCA	BCSPCA Submissions – Sarkozi
Exhibit #10	March 15, 2023	BCSPCA	Affidavit #1 of M. Moriarty
Exhibit #11	March 15, 2023	BCSPCA	BCSPCA Witness Contact Form
Exhibit #12	March 15, 2023	BCSPCA	BCSPCA Expert Witness Handout and Form
Exhibit #13	March 16, 2023	Appellant	Appellant Final Submission (PDF document of combined email attachments)
Exhibit #14	March 16, 2023	Appellant	Appellant Final Submission – video: 20180612_154815