29 March 2023

**DECISION**

**RACING VICTORIA**

**and**

**MARK SUES**

**Date of hearing:** 27 March 2023

**Panel:** Judge John Bowman (Chairperson), Judge Graeme Hicks and Mr Des Gleeson.

**Appearances:** Mr Albert Dinelli instructed by Mr Scott Hunter appeared on behalf of the Stewards.

Mr Mark Sues represented himself and appeared as a witness.

**Charges and Particulars: Charge One: AR 245(1)**

AR 245 Administration of prohibited substance in sample taken from horse before/after running in race (1) A person must not: (a) administer; or (b) cause to be administered, a prohibited substance on Prohibited List A and/or Prohibited List B to a horse which is detected in a sample taken from the horse prior to or following the running of a race. …

**Particulars of Charge**

1. You are, and were at all relevant times, a trainer bound by the Rules of Racing.

2. You were, at all relevant times, the trainer of Finally Free (the Horse).

3. On 5 May 2019, the Horse ran in the Farmers Friend BM58 Handicap over 1600 metres at the Bairnsdale Racecourse (the Race).

4. Prior to the Race, you administered or caused to be administered Cobalt to the Horse, which was detected to be present and above the relevant threshold in a post-race urine sample taken from the Horse.

5. Cobalt is a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 of the Rules of Racing (Prohibited List B), subject to the threshold in Item 11 of Division 3 of Part 2 of Schedule 1 of the Rules of Racing.

**Charge Two: AR 240(2) [Alternative to Charge One]**

AR 240 Prohibited substance in sample taken from horse at race meeting … (2) Subject to subrule (3), if a horse is brought to a racecourse for the purpose of participating in a race and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the trainer and any other person who was in charge of the horse at any relevant time breaches these Australian Rules.

**Particulars of Charge**

1. You are, and were at all relevant times, a trainer bound by the Rules of Racing.

2. You were, at all relevant times, the trainer of Finally Free (the Horse).

3. On 5 May 2019, the Horse was brought to the Bairnsdale Racecourse and ran in the Farmers Friend BM58 Handicap over 1600 metres (the Race).

4. On 5 May 2019, following the running of the Race, a urine sample was taken from the Horse, which detected the presence of Cobalt above the relevant threshold (the Sample).

5. Cobalt is a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 of the Rules of Racing (Prohibited List B), subject to the threshold in Item 11 of Division 3 of Part 2 of Schedule 1 of the Rules of Racing.

**Plea:** Guilty to Charge 1.

Charge 2 is withdrawn.

**DECISION**

Mr Mark Sues, you have pleaded guilty to a breach of AR 245(1). You did not clearly indicate your intention so to plead until immediately before the hearing of the matter on 10 October 2022. The matter had been on foot for some time prior to that. The charge to which you have pleaded guilty relates to a return positive to cobalt arising from a swab taken from Finally Free, a horse trained by you, which ran at Bairnsdale on 5 May 2019.

The hearing before us largely centred upon the issue of causation of the elevated cobalt reading obtained from the horse. You conducted the case essentially on the basis that it resulted from the use by you of the product, Hygain Release. You referred quite frequently to the case of Mr Mitchell Freedman, which involved that product.

We rejected that argument. We would refer to our quite lengthy decision of 17 January 2022. The bottom line is that we were not satisfied that the elevated reading was caused by the horse being fed Hygain Release. In other words, we rejected the principal argument advanced at some length by you. We rejected your explanation that the feeding of Hygain Release was responsible for the elevated reading.

There is no argument but that you were the only person who fed the horse. This you readily admit. Thus, administration by you was admitted and hence the ultimate guilty plea. However, in conducting your case, and to use a common expression, effectively you put all your eggs in one basket and that basket was the Hygain Release argument, which we have rejected. How the administration was in fact effected is uncertain.

Turning to your situation, you are 47 years of age and have been training for a number of years. Whilst you do not have a completely clean record, there is no relevant prior conviction of any magnitude. You conduct a small stable of horses which race and with no other relevant employees. You do have other involvement with horses, and your income is gained from a variety of activities. The actual training and racing of horses to race apparently plays a comparatively minor role in your work.

Stewards have sought suspension for nine months. You have sought a comparatively brief suspended suspension.

We would point out the following. As has been said repeatedly by this Tribunal and its predecessor, the image of racing as a drug free industry is of great importance. The concept of a level playing field is central to the concept of racing being a fair and honest industry. Further, the administration of substances such as cobalt, whether it be administered deliberately or due to negligence or oversight, strikes a blow at that image of fairness.

In all the circumstances, the imposition of a period of suspension is warranted. Weighing all these matters up, including the absence of any relevant prior offence, we have arrived at a penalty of suspension until the end of the racing year – that is until 31 July 2023.

The actual suspension shall not commence until Monday next, 3 April 2023. You are not permitted to race any horse in the period prior to that date and the suspension will operate from that date – see Rules 283(7) and (8).

In addition, Finally Free is disqualified from Race 7 at Bairnsdale on 5 May 2019 and the finishing order is amended accordingly.

Mark Howard  
Registrar, Victorian Racing Tribunal