9 May 2023

**DECISION**

**RACING VICTORIA**

**and**

**ARCHIE ALEXANDER**

**Date of hearing:** 28 April 2023

**Panel:** Judge John Bowman (Chairperson) and Ms Heidi Keighran.

**Appearances:** Mr Jack Anderson, instructed by Mr Marwan El-Asmar, appeared on behalf of the Stewards.

Mr Tim Johnson appeared on behalf of Mr Archie Alexander.

**Charge:** Australian Rule of Racing (“AR”) 240(2) states:

(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: AR 240(2)**

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

2. You were, at all relevant times, the trainer of ‘Sylvan Sisterhood’ (the Horse).

3. On 16 October 2022, the Horse was brought to Pakenham Racecourse and ran in the Midwinter Lawyers Maiden Plate (race 2) over 1200 metres (the Race).

4. On 16 October 2022, following the Race, a blood sample (V633186) was taken from the Horse (the Sample).

5. An analysis of the Sample detected the presence of Naproxen.

6. Naproxen is a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 of the Rules of Racing (Prohibited List B).

**Plea:** Guilty

**DECISION**

Mr Archie Alexander, you have pleaded guilty to a breach of AR 240(2) – that is, bringing or presenting a horse to a racecourse for the purpose of participating in a race when the horse has a prohibited substance in its system.

The Charge involves the presentation of Sylvan Sisterhood to perform in Race 2 at Pakenham on 16 October 2022, a race which it won.

The prohibited substance was Naproxen, an anti-inflammatory. The likely cause of the presence of Naproxen was that it is a substance found in medication used by persons suffering from physical injuries or like conditions. One of your employees, Mr Jamie Suhan, was suffering from an injury to the leg and had taken some relevant medication. We might add that there seems to be no record of Naproxen appearing in a swab sample taken from a horse in Australia.

We accept that the above represents the likely scenario. We also accept that you did not have in place in relation to stable staff who took medications the wearing of gloves or the like or any other relevant system. You have since remedied this situation and introduced compulsory glove wearing by your staff. Steps such as this are important in the task of showing racing to be a drug free industry. We would add that yours is a large stable, with some sixty horses and a staff of approximately 20.

A problem which you face is your record. You have two relevant prior convictions. On 29 October 2015 you were fined $500 for a breach of then AR 178. That related to the presentation of the prohibited substance, Ibuprofen.

On 29 November 2021, you pleaded guilty to a breach of AR 245. This concerned the administration of the prohibited substance, cobalt. It was found that the actual administration was by a person or persons unknown.

This Tribunal then imposed the following penalties. There was a fine of $3,000. Further, you were suspended for a period of six weeks. That suspension was in turn adjourned on specific and quite clear terms. The suspension of 6 weeks was in turn fully suspended for a period of 24 months on the condition that you not breach any provision of the Rules of Racing dealing with prohibited substances in that period. The wording is clear, explicit and intended. Of course, at this time you had a prior offence in relation to prohibited substances.

In our opinion, the charge to which you plead guilty is a breach of the condition attached to the suspension imposed on 29 November 2021. You have breached a Rule of Racing dealing with prohibited substances during the 24 month period.

We are of the view that the breach triggers the operation and implementation of the suspended period of suspension that was imposed. Apart from the fact that we are of the view that the suspended suspension should become operative as a result of this further offence, it would effectively render meaningless and impotent the original condition imposed if we did not so enforce it. It would not comply with what was intended and what was stated. Some discussion arose as to the appropriateness of the penalty imposed at that time and subsequently breached. We note that there was no appeal. We agree with the Stewards that not to activate the suspended sentence would undermine the objectives of suspended sentences.

Thus, we are of the view that the breach of the suspended suspension activates the operation of the above wording and, as a matter of principle, it should be so activated. We are also of the view that this activation is the appropriate procedure to take, bearing in mind the history of events and convictions. Suspension for 6 weeks is ordered.

The Stewards also seek that a fine in the range of $3,000 to $5,000 be imposed. We agree that there should be a fine. The suspension is the result of the breach of the earlier order. The fine is the penalty for this particular breach. We have taken into account the prevailing circumstances and fix that fine at $3,000. In fixing the fine at the minimum suggested by the Stewards and not in essence opposed, we have taken into account the guilty plea, the co-operation with the Stewards and the general circumstances of the offence in question.

Further, Sylvan Sisterhood is disqualified from Race 2 at Pakenham on 16 October 2022 and the prize money redistributed accordingly.

Mark Howard
Registrar, Victorian Racing Tribunal