14 August 2020

**DECISION**

**RACING VICTORIA**

**and**

**MR BILL CERCHI**

**Date of hearing:** 3 August 2020

**Panel:** Judge John Bowman (Chairperson).

**Appearances:** Mr Daniel Bolkunowicz appeared on behalf of the Stewards.

Mr Trevor Monti appeared on behalf of Mr Cerchi.

**Charges and particulars:** **Charge One: AR 249**

**AR 249 Administration of medication on race day**

*(1) Notwithstanding the provisions set out in Schedule 1, Part 2, Division 2, a person must not, without the permission of the Stewards:*

1. *administer; or*
2. *cause to be administered,*

*any medication to a horse at any time on race day prior to the commencement of a race in which the horse is engaged to race.*

**Particulars of Charge**

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

1. You are, and were at all relevant times, the trainer of *Backstreet Alley.*

1. On 31 December 2019, *Backstreet Alley* was scheduled to race in the Westvic Waste and Recycling BM64 Handicap over 1100 metres (the race).

1. On 31 December 2019, prior to the commencement of the race, without the permission of the Stewards, you administered and/or caused to be administered, Frusemide, to *Backstreet Alley*.

1. Frusemide is considered to be a medication for the purposes of the Rules of Racing.

1. On 31 December 2019, *Backstreet Alley* was brought to the Warrnambool racecourse andran in the race.

1. Frusemide was detected in a pre-race blood sample taken from *Backstreet Alley* prior to the running of the race.

1. Your conduct, as set out in particular 4 above, was in contravention of AR 249(1).

**Charge Two AR 245 (1) (Alternative to Charge One)**

**AR 245 Administration of prohibited substance in sample taken from horse before/after running in race**

 *(1) A person must not:*

1. *administer; or*
2. *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 licensed by Racing Victoria.

1. You are, and were at all relevant times, the trainer of *Backstreet Alley.*

1. On 31 December 2019, *Backstreet Alley* was scheduled to race in the Westvic Waste and Recycling BM64 Handicap over 1100 metres (the race).

1. Prior to the commencement of the race, you administered and/or caused to be administered, Frusemide, to *Backstreet Alley*.

1. On 31 December 2019*, Backstreet Alley* was brought to the Warrnambool racecourse andran in the race.

1. Frusemide was detected in a pre-race blood sample taken from *Backstreet Alley* prior to the running of the race.

1. Frusemide is listed as a prohibited substance pursuant to item 2(mm) of Division 1 of Part 2 of Schedule 1 of the Australian Rules of Racing.

1. Your conduct, as set out in particular 4 above, was in contravention of AR 245(1).

**Charge Three: AR 240 (Alternative to Charges One and Two)**

**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 licensed by Racing Victoria.

1. You are, and were at all relevant times, the trainer of *Backstreet Alley.*

1. On 31 December 2019*, Backstreet Alley* was brought to the

Warrnambool racecourse andran in the Westvic Waste and Recycling BM64 Handicap over 1100 metres (the race).

1. A prohibited substance, being Frusemide, was detected in a pre-race blood sample taken from *Backstreet Alley* prior to the running of the race.

1. Frusemide is listed as a prohibited substance pursuant to item 2(mm) of Division 1 of Part 2 of Schedule 1 of the Australian Rules of Racing.

**Pleas:** Guilty

**DECISION**

Mr Bill Cerchi, you have pleaded “guilty” to a breach of AR249.

The breach involves the following. You were the trainer of Backstreet Alley, which ran in Race 8 at Warrnambool on 31 December 2019. A pre-race blood sample revealed the presence of a prohibited substance, namely Frusemide. Frusemide is a diuretic agent which reduces the amount of fluid in a horse’s body, thereby causing rapid weight loss, and can also act as a masking agent.

It is an offence pursuant to AR249 to administer medication at any time on race day prior to the commencement of a race in which a horse is to run.

In fact, two days after the relevant race at Warrnambool, you rang the Stewards and informed them of the administration. At the time you were of the belief that the substance which you had administered was in fact Diurex and that it had been so administered approximately two days prior to the race. At the time, Frusemide was in a container in your medication cabinet, as was Diurex. However, the scientific evidence contained in the report of Dr Barry Smyth puts the probable time of administration at 9am on raceday and there is little doubt but that the substance so administered was in fact Frusemide. Whilst you may have confused the substances and the timing of events, the bottom line is that you have pleaded guilty to the breach of AR249 and have done so for quite some time. I might add that Backstreet Alley in fact performed very poorly in the race, which was unexpected. You had advised the owners that it was, in essence, a good chance and backed it yourself.

Your situation is that you come from a well-known racing family. Your father, the late Mr Jim Cerchi, was a prominent and well-respected trainer. You are now aged 65 years and have been in the racing industry since you were a teenager. You have been a licenced trainer for in excess of 40 years. You are a single man, having separated from your wife. You are based at Colac and currently train a modest number of horses. However, I accept the proposition put by Mr Monti on your behalf that you are essentially personally responsible for saving Colac as a training establishment. I also accept that you have problems with reading and writing and discovered some 15 years ago that you are dyslexic.

Very impressive references have been put before me. These are from Professor Richard Harper, a cardiologist, and owner of horses trained by you; Mr Keith Elliot a very long-standing owner; and Mr Matt Walsh, President of the Colac Turf Club. I have certainly taken them into account. They speak of your trustworthiness, hard work and reliability. Your own health is far from perfect and you continue to have significant health problems. Apart from physical ailments, you have been depressed and also extremely anxious in relation to this charge. Further, you have taken on a track rider who had major drug problems and have assisted greatly in her rehabilitation.

Also of importance is that, whilst you have been in the racing industry for a long time, you have an excellent record. You have never previously been before the Stewards for anything of magnitude, if at all. Given the decades involved in the length of your career, that is indeed an outstanding record.

However, general deterrence must be borne in mind. The message must be sent, and sent repeatedly, that race day administration of this nature will not be tolerated and will carry with it the risk of disqualification or suspension.

I have had regard to the penalties imposed in other cases to which my attention has been drawn by Mr Bolkunowicz, on behalf of the Stewards. Obviously each case must be considered on its individual merits, but such cases are of assistance in arriving at an appropriate penalty.

Weighing up all these matters, I am of the view that a period of suspension must be imposed. Because of the large number of factors operating in your favour, including your outstanding record, I am not of the opinion that is should be as lengthy as might otherwise have been the case.

You are suspended for a period of two months. That is not 8 weeks, but, if my mathematics are correct, until 11.59pm on Sunday 4 October 2020. Backstreet Alley is disqualified from Race 8 at Warrnambool on 31 December 2019 and the finishing order amended accordingly.

Mark Howard
Registrar, Victorian Racing Tribunal