11 May 2021

**DECISION**

**RACING VICTORIA**

**and**

**BRENDAN McCARTHY**

**Date of hearing:** 29 April 2021

**Panel:** Judge John Bowman (Chairperson) and Mr Greg Childs.

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

Mr Brendan McCarthy represented himself.

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

 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.
2. You were at all relevant times, the trainer of *Vladking.*
3. On 30 April 2020, *Vladking* was brought to the Pakenham Racecourse and ran in the Parklea Maiden Plate over 1200 metres (the race).
4. A prohibited substance, being Benzoylecgonine and Ecgonine Methyl Ester, was detected in a post-race urine sample taken from *Vladking* at the Pakenham Racecourse after winning the race.
5. Benzoylecgonine and Ecgonine Methyl Ester are prohibited substances pursuant to Division 1 and Part 2 of Schedule 1 (Prohibited List B) of the Australian Rules of Racing.

**Plea:** Guilty

**DECISION**

Mr Brendan McCarthy, you have pleaded guilty to a breach of AR 240(2). This relates to a post-race swab taken from *Vladking*, trained by you, after it won at Pakenham on 30 April 2020. The sample proved positive to metabolites of cocaine.

As stated, you are pleading guilty to what is usually described as a presentation offence. There is no suggestion that you yourself administered the prohibited substance to *Vladking*, either knowingly or unknowingly. You could provide no explanation for the positive swab. That is no criticism. Indeed, you have undergone testing and have organised testing for some staff. No explanation has emerged. You have some 14 horses in work, with stables at Caulfield and at your farm where you live in Heath Hill.

Given the size of your operation, you are to some extent dependent on sharing track riders with other trainers at Caulfield. Whilst you may have some suspicions concerning a couple of these and whether they are drug users, there is no proof of their involvement. You are also prepared to give people a chance and employ them, even if they have had problems, which is to your credit, but it involves some risk.

You have been training for some 41 years. You do not have an unblemished record, having been suspended for 3 months in 2015. That was for a race day treatment, as opposed to a prohibited substance. Thus, you record is not perfect, but, bearing in mind how long you have been training, it could be considered as good.

As submitted by Mr Bolkunowicz on behalf of the Stewards, general deterrence is a very important factor. Positive returns to prohibited substances gives racing a very bad impression to the general public particularly as to whether the industry is being conducted on a level playing field. Participants must make every effort to ensure that horses are not presented to racetracks with prohibited substances in their system.

We are of the view that a fine is warranted, bearing in mind your 41 years of training, your particular circumstances and the attitude you have adopted in trying to trace the source of the prohibited substance, we fix that fine at $4,000. In addition, *Vladking* is disqualified from the race in which it competed at Pakenham on 30 April 2020 and the finishing order is amended accordingly.

Mark Howard
Registrar, Victorian Racing Tribunal