14 August 2020

**DECISION**

**RACING VICTORIA**

**and**

**MS JENNY GOW-WHYTE**

**Date of hearing:** 31 July 2020

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

**Appearances:** Mr Justin Hooper appeared on behalf of the Stewards.

Mr Trevor Monti appeared on behalf of Ms Gow-Whyte.

**Charges and particulars:** **Charge One: AR 244**

**AR 244 Administration of prohibited substance to affect race performance**

(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 for the purpose of affecting the performance or behaviour of the horse in a race, or of preventing it starting in 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 *Soul Fire.*
3. On 3 August 2018*, Soul Fire* ran in the Elephant & Castle Hotel BM70 Handicap over 1100 metres at the Geelong racecourse (**the race**).
4. Prior to the race you administered, or caused to be administered, to *Soul Fire* a prohibited substance, being cobalt at a concentration in excess of 100 micrograms per litre in urine for the purpose of affecting the performance or behaviour of *Soul Fire* in the race.
5. Cobalt exceeding a mass concentration of 100 micrograms per litre in urine is a prohibited substance pursuant to Part 2 of Schedule 1 of the Rules of Racing.
6. At the time of the relevant conduct described, it was an offence under AR 175(h)(i) (as then in force) to engage in the conduct described in particular 4.
7. By reason of AR 8(2)(e) of the Rules of Racing, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of these Australian Rules.

**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:

(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 *Soul Fire.*
3. On 3 August 2018*, Soul Fire* ran in the Elephant & Castle Hotel BM70 Handicap over 1100 metres at the Geelong racecourse (**the race**).
4. Prior to the race you administered, or caused to be administered, to *Soul Fire* a prohibited substance, being cobalt at a concentration in excess of 100 micrograms per litre in urine, which was detected in a pre-race urine sample taken from *Soul Fire* prior tothe running of the race.
5. Cobalt exceeding a mass concentration of 100 micrograms per litre in urine is a prohibited substance pursuant to Part 2 of Schedule 1 of the Rules of Racing.
6. At the time of the relevant conduct described, it was an offence under AR 175(h)(ii) (as then in force) to engage in the conduct described in particular 4.
7. By reason of AR 8(2)(e) of the Rules of Racing, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of these Australian Rules.

**Charge Three: AR 240(2) [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 bound by the Rules of Racing.
2. You are, and were at all relevant times, the trainer of *Soul Fire.*
3. On 3 August 2018*, Soul Fire* was brought to the Geelong racecourse for the purpose of engaging in the Elephant & Castle Hotel BM70 Handicap over 1100 metres (**the race**).
4. A prohibited substance, being cobalt at a concentration in excess of 100 micrograms per litre in urine, was detected in a pre-race urine sample taken from *Soul Fire* prior to the running of the race.
5. Cobalt exceeding a mass concentration of 100 micrograms per litre in urine is a prohibited substance pursuant to Part 2 of Schedule 1 of the Rules of Racing.
6. At the time of the relevant conduct described, it was an offence under AR 178 in particulars 3 and 4.
7. By reason of AR 8(2)(e) of the Rules of Racing, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of these Australian Rules.

**Charge Four: AR 254**

**AR 254 Injections prohibited at certain times**

(1) A person must not, without the permission of the Stewards:

(a) inject;

(b) cause to be injected;

(c) attempt to inject; or

(d) be a party to the injection or attempted injection of,

a horse engaged to run in any race:

(i) at any time on the day of the scheduled race and prior to the start of that race; and/or

(ii) at any time during the 1 clear day prior to 12.00am on the day of the scheduled 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 *Soul Fire*.
3. On 5 June 2018, Soul Fire was entered to run in Race 7, the Garden Tyrepower BM64 Handicap over 1200 metres at Warrnambool (**the race**).
4. Without the permission of the Stewards, you injected *Soul Fire* or caused *Soul Fire* to be injected at some time:
	1. on 5 June 2018, prior to the race; or
	2. during the One Clear Day prior to 12:01am on 5 June 2018.
5. At the time of the relevant conduct described, it was an offence under AR 178 AB(1) to engage in the conduct described in particular 4.
6. By reason of AR 8(2)(e) of the Rules of Racing, any offence committed under or in breach of the previous Australian Rules is deemed to be an offence committed under or in breach of these Australian Rules.

**Pleas:** Guilty to charges 2 and 4.

 **Charges 1 and 3 were withdrawn by the Stewards**

**DECISION**

Ms Jenny Gow-Whyte, you have pleaded “guilty” to two charges. They are a breach of AR245(1) and a breach of AR254.

The breach of AR245(1) involves the following. You were the trainer of Soul Fire, which ran in Race 7 at Geelong on 3 August 2018. A pre-race swab taken from that horse tested positive to cobalt at a level in excess of the prescribed limit. The reading was actually 3,500. Your explanation has been that, whilst you avoided products such as VAM and B12, you had used a product called Beachport Minerals. You favour more natural products. Beachport Minerals was recommended to you by a friend, it essentially being made out of seaweed. When Soul Fire had a thyroid problem which could have been related to a lack of iodine, you commenced to use this product in the horse’s treatment, seaweed being high in iodine content.

This treatment went on over a number of weeks, with beneficial effect. Your belief is that the last dose of Beachport Minerals was given to Soul Fire at least two days before the race at Geelong on 3 August 2018. The horse ran an improved race, finishing third, although being six lengths behind the winner.

The positive return to cobalt came to you as a great shock. I might add that Soul Fire is a particular favourite of yours, he having been a very consistent performer, overcoming severe injuries suffered when he was a young horse. I accept that he is “very precious” to you and you still ride him at the beach.

You have prepared and sworn a handwritten affidavit, which was put before me by your Counsel, Mr Monti. It is detailed. I accept many of the important statements sworn to in it. I note that it states that you are guilty of presentation “for sure”, adding that you failed to do “due diligence” in the sense of not researching the product thoroughly, as you usually do. However, you emphasise that you had no intention of trying to cheat by deliberately administering a substance which would unfairly improve performance.

Your affidavit and the plea of Mr Monti set out many matters of relevance. You are approaching 72 years of age. You train a small team of horses by yourself, effectively doing everything except riding fast work. You are a widow and live alone. As you have sworn in your affidavit, “my horses are my friends, family and my life”.

You have been a licensed trainer for 48 years. You have an excellent record, the only blemish being a breach of AR240(2) involving a positive return to “Bute”. I heard that case at the Racing Appeals and Disciplinary Board on 9 October 2019. I accepted then, as I do now, that you did not administer the prohibited substance or know anything about the administration. You pleaded “guilty”, essentially on the basis of inadequate stable security. That proposition was accepted and you were fined a comparatively modest amount. Whilst you cannot be described as a person with a flawless record, I am satisfied that, for a person who has been involved in the industry for in excess of fifty years, you do have an excellent one.

In relation to this charge, general deterrence must be borne in mind. Those in the industry have been warned time and time again about cobalt. There have been well publicised cases. In the present case, the labels on Beachport Minerals made it clear that cobalt was an ingredient. You, Ms Gow-Whyte, may now have learned your lesson, but general deterrence remains a very important factor. Bearing all of the above in mind, I am of the view that a period of suspension is an appropriate and warranted penalty. However, also bearing in mind your situation, your excellent record, your love of your horses and the circumstances of your offending, I am not of the opinion that the period of suspension for 9 months sought by the Stewards is appropriate. Nor am I of the opinion that, as argued by Mr Monti, a period of two months suspension would be adequate.

It is my finding that for this offence you should be suspended for the balance of this calendar year – a suspension of a little under five months. Accordingly, in relation to the charge pursuant to AR245(1), you are suspended until 11.59pm on 31 December 2020.

I turn now to the charge pursuant to AR254. I shall not go into this in great detail. This is a totally separate charge. Rule 254 prohibits the injection or attempted injection of a horse without the permission of the Stewards on the day of the relevant scheduled race or during one clear day prior to midday on the day of the scheduled race. The particulars of the charge against you concern an injection given to Soul Fire the day before it was due to compete in Race 7 at Warrnambool on 5 June 2018. There is nothing particularly sinister about this treatment, but what occurred was clearly a breach of the Rule and you have pleaded “guilty” to it. Again, trainers should be aware of the operation and scope of the Rule. General deterrence is an important consideration. As with the charge pursuant to AR245, specific deterrence may not loom so large and, as stated, there was nothing sinister or quasi criminal about the injection. However, public perception is again important.

The Stewards have sought a penalty of six weeks suspension cumulative upon the penalty in relation to the penalty imposed for the breach of AR245.

I am of the view that a suspension for 6 weeks is appropriate, but in my opinion it should be in turn suspended for a period of 12 months. In other words, if there is a breach of a relevant Rule in the next 12 months, the penalty of 6 weeks suspension may be activated. As stated, I have arrived at this conclusion basically because of your plea of guilty, your excellent record and the other factors put before me and discussed in relation to the AR245 breach. Thus, overall there is an immediate suspension until 11.59pm on 31 December 2020 and a 6 week suspension in turn suspended for a period of 12 months.

Finally, Soul Fire is disqualified from both Race 7 at Geelong on 3 August 2018 and Race 7 at Warrnambool on 5 June 2018. In each instance, the finishing order is to be amended and any prize money involved is to be redistributed.

Mark Howard
Registrar, Victorian Racing Tribunal