7 October 2022

**DECISION**

**RACING VICTORIA**

**and**

**KANE HARRIS**

**Date of hearing:** 3 October 2022

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

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

Mr Robert Harris represented Mr Kane Harris.

Mr Kane Harris attended the hearing.

**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 charges: Charge 1: AR 240(2) – Kamo Charge**

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

2. You are, and were at all relevant times, the trainer of Kamo (the Horse).

3. On 11 May 2021, the Horse was brought to the Mornington racecourse and ran in the Asset Painting Services Handicap over 2050 metres (the Race).

4. On 11 May 2021, prior to the running of the Race, a blood sample was taken from the Horse (the Sample).

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

6. Flunixin is considered a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 (Prohibited list B) of the Australian Rules of Racing.

**Charge 2: AR 240(2) – Mr Grumpy Charge**

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

2. You are, and were at all relevant times, the trainer of Mr Grumpy (the Horse).

3. On 18 July 2021, the Horse was brought to the Warracknabeal Racecourse and ran in the Moama Bowling Club 0-58 Handicap over 1200 metres (the Race).

4. On 18 July 2021, after the running of the Race, a urine sample was taken from the Horse (the Sample).

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

6. Dexamethasone is considered a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 (Prohibited list B) of the Australian Rules of Racing

**Pleas:** Guilty to both charges

**DECISION**

Mr Kane Harris, you have pleaded guilty to two charges pursuant to Australian Rule of Racing (“AR”) 240(2).

They are quite separate and distinct charges. The earlier in time, which we shall refer to as Charge 1, concerns the horse Kamo. It returned a pre-race swab positive to the prohibited substance, Flunixin. The swab was taken before the Asset Painting Services Handicap at Mornington on 11 May 2021.

Charge 2 concerns the horse Mr Grumpy. It returned a post-race swab positive to the prohibited substance, Dexamethasone, or “Dex”. The swab was taken after the running of the Moama Bowling Club Handicap at Warracknabeal on 18 July 2021.

Whilst you have pleaded guilty to both charges, that position was only fully finalised this day, effectively during discussions prior to the commencement of the actual hearing.

Your situation is that you are a young trainer living with your partner on a substantial property of 50 acres located at Cannons Creek, which is in the general vicinity of Mornington. You have a racing background as a stable employee and a jockey at picnic meetings before you and your partner, who is also a racing person, went into the type of work in which you are now engaged. Whist you train for racing approximately 20 horses, many of them owned by yourselves, you appear to be in a much bigger way to be involved in work which involves rehabilitation and preparation of horses that have suffered problems. You have widespread support from trainers, including some prominent in the industry, and can have 70 or more horses at your premises.

You suffered a major personal and financial set back when the house in which you had previously lived burned down at a time when you had no insurance cover. You have set up your present establishment, which also includes a training track, but the expenses have been great and we accept that you make very substantial monthly mortgage repayments.

You have a number of prior convictions for a multitude of offences, many occurring in relation to your riding and behaviour at picnic meetings.

You have one relevant prior conviction of note. This concerns a positive return to the prohibited substance “Dex” in relation to the horse Crooner racing at Flemington on 1 January 2016. You pleaded guilty and were fined the sum of $2,500.

We have weighed up the competing submissions and we now turn to the penalties deemed by us to be appropriate in the circumstances. In so doing, we have not taken into account as a prior conviction a breach of AR 245(1) involving the horse Monsters Inc. Whilst the relevant offence occurred on 16 October 2020, it was not dealt with until December, 2021, after the commission of the relevant offences in the present cases. Thus, as at the time of the commission of those offences, no findings of guilt or innocence had been made in the case of Monsters Inc. The most that can be said is that the fact that you had been investigated in respect of Monsters Inc should have put you on greater alert when the present offences occurred. Of course, what had earlier occurred in relation to the horse Crooner as discussed above is relevant.

Whilst you will receive some credit for your guilty pleas in the present case, they certainly could not be described as early pleas of guilty.

Bearing all of the above in mind, we impose the following penalties.

On Charge 1 involving Kamo, you are fined the sum of $6,000.

We regard Charge 2 involving Mr Grumpy as being more serious, as it in your second “Dex” offence. Further, it occurred shortly after your being you being investigated in relation to Kamo – that is, at a time when you should have been particularly on alert.

On Charge 2, you are fined the sum of $8,000. Further, you are suspended for a period of three months, but that penalty is in turn suspended for a period of 12 months pending no further breach of the relevant Rule. In addition, each horse is disqualified from the race in which it competed and the finishing orders are amended accordingly.

Mark Howard  
Registrar, Victorian Racing Tribunal