22 December 2021

**DECISION**

**RACING VICTORIA**

**and**

**KANE HARRIS**

**Date of hearing:** 15 December 2021

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

**Appearances:** Mr Albert Dinelli instructed by Mr Daniel Bolkunowicz appeared on behalf of the Stewards.

Mr Rob Harris appeared on behalf of Mr Kane Harris.

**Charges and particulars:** **Charge One: AR 245 (1)**

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 licensed by Racing Victoria.

2. You are, and were at all relevant times, the trainer of Monsters Inc.

3. On 16 October 2020, Monsters Inc was brought to the Moe racecourse and ran in the Triple M Gippsland BM64 Handicap over 1000 metres (the race).

4. Prior to the commencement of the race, you administered and/or caused to be administered, Salbutamol (or a substance containing Salbutamol), to Monsters Inc.

5. Salbutamol was detected in a post-race urine sample taken from Monsters Inc following the running of the race.

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

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

**Charge Two: AR 240 (2) (Alternative to Charge One)**

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.

2. You are, and were at all relevant times, the trainer of Monsters Inc.

3. On 16 October 2020, Monsters Inc was brought to the Moe racecourse and ran in the Triple M Gippsland BM64 Handicap over 1000 metres (the race).

4. A prohibited substance, being Salbutamol, was detected in a postrace urine sample taken from Monsters Inc following the running of the race.

5. Salbutamol is listed as a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 (Prohibited list B) of the Australian Rules of Racing.

**Charge Three: AR 104**

AR 104 Trainers must keep treatment records

(1) A trainer must record any medication or treatment administered to any horse in the trainer’s care by midnight on the day on which administration was given.

(2) For the purpose of subrule (1), each record of administration must include the following information:

(a) the name of the horse;

(b) the date and time of administration of the treatment or medication;

(c) the name of the treatment or medication administered (brand name or active constituent);

(d) the route of administration including by injection, stomach tube, paste, topical application or inhalation;

(e) the amount of medication given (if applicable);

(f) the duration of treatment (if applicable);

(g) the name and signature of the person/s administering and/or authorising the administration of the treatment or medication. (3) For the purposes of this rule “treatment” includes:

(a) shock wave therapy;

(b) acupuncture (including laser treatment);

(c) chiropractic treatment;

(d) the use of any electrical stimulation device (including transcutaneous electrical nerve stimulation (TENS));

(e) magnetic field therapy;

(f) ultrasound;

(g) any form of oxygen therapy, including hyperbaric oxygen therapy;

(h) the taking of a blood sample.

(4) For the purposes of this rule “medication” includes:

(a) all Controlled Drugs (Schedule 8) administered by a veterinarian;

(b) all Prescription Animal Remedies (Schedule 4), including those listed in Schedule 1, Part 2, Division 2 to these Australian Rules;

(c) all Prescription Only Medicines (Schedule 4), prescribed and/or dispensed by a veterinarian for off-label use;

(d) all injectable veterinary medicines (intravenous, intramuscular, subcutaneous, intra-articular) not already referred to above;

(e) all Pharmacist Only (Schedule 3) and Pharmacy Only (Schedule 2) medicines;

(f) all veterinary and other medicines containing other scheduled and unscheduled prohibited substances;

(g) all alkalinising agents;

(h) all herbal preparations.

(5) All records required to be kept in accordance with this rule must be retained by the trainer for at least 2 years.

(6) When requested, a trainer must make available to the Stewards the record of any administration of a treatment and/or medication required under subrule (1).

**Particulars of Charge**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria, and accordingly responsible for the maintenance of your treatment records, including with respect to Monsters Inc. 2. In an interview on 23 November 2020, you gave evidence that you administer a medication (containing salbutamol) twice a day. Those twice daily administrations were not recorded in your treatment diary (except for 2 October, 5 October, 8 October and 13 October 2020) in accordance with the requirements of AR 104.

**Pleas:** Guilty to Charges 1 and 3

**DECISION**

Mr Kane Harris, you have pleaded guilty to two charges. A third alternate charge has dropped away as a result of your pleas.

The first charge relates to the horse Monsters Inc, which raced at Moe on 16 October 2020. Monsters Inc won the race, which was over 1,000 metres. A post-race urine substance proved positive to the prohibited substance, salbutamol. A charge was laid pursuant to AR 245(1), that is administration of a prohibited substance.

The Stewards have recommended a fine of $5,000 in relation to this charge. It is a penalty which you accept. The final decision is always that of the Tribunal, but if the parties have agreed upon a proposed penalty, the Tribunal will frequently apply that penalty. If the Tribunal formed the view that the suggested agreed penalty was manifestly inadequate or manifestly excessive, it would impose its own penalty, but it would be fair to say that this is a rare occurrence. In general terms, we have confidence in the Stewards and the industry member to the effect that, if they have agreed upon a proposed penalty, it is usually going to be appropriate.

Accordingly, in relation to Charge 1, a fine of $5,000 is imposed.

The second charge relates to a breach of AR 104. This is the failure to maintain proper and accurate records. Good record keeping by trainers is of great importance. It assists the Stewards in their endeavours to maintain the image of a level playing field and to maintain public confidence. The agreed penalty is a fine of $500 and this seems to us to be appropriate. You are fined that amount accordingly.

Finally, Monster Inc is disqualified from Race 4 at Moe on 16 October 2020 and the finishing order amended accordingly.

We would add the following. You are one of the younger and highly promising trainers in this state. What has occurred in this instance is now on your record. We are confident that you will not make a mistake such as this again.

Mark Howard
Registrar, Victorian Racing Tribunal