16 August 2022

**DECISION**

**RACING VICTORIA**

**and**

**MARK SUES**

**Date of hearing:** 10 August 2022

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

**Appearances:** Mr Albert Dinelli instructed by Mr Scott Hunter appeared on behalf of the Stewards.

Mr Mark Sues represented himself.

**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 bound by the Rules of Racing.

2. You were, at all relevant times, the trainer of Finally Free (the Horse).

3. On 5 May 2019, the Horse ran in the Farmers Friend BM58 Handicap over 1600 metres at the Bairnsdale Racecourse (the Race).

4. Prior to the Race, you administered or caused to be administered Cobalt to the Horse, which was detected to be present and above the relevant threshold in a post-race urine sample taken from the Horse.

5. Cobalt is a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 of the Rules of Racing (Prohibited List B), subject to the threshold in Item 11 of Division 3 of Part 2 of Schedule 1 of the Rules of Racing.

**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 bound by the Rules of Racing.

2. You were, at all relevant times, the trainer of Finally Free (the Horse).

3. On 5 May 2019, the Horse was brought to the Bairnsdale Racecourse and ran in the Farmers Friend BM58 Handicap over 1600 metres (the Race).

4. On 5 May 2019, following the running of the Race, a urine sample was taken from the Horse, which detected the presence of Cobalt above the relevant threshold (the Sample).

5. Cobalt is a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 of the Rules of Racing (Prohibited List B), subject to the threshold in Item 11 of Division 3 of Part 2 of Schedule 1 of the Rules of Racing.

**Pleas:** Reserved

**ADJOURNMENT APPLICATION**

In this matter, there is an application by Mr Mark Sues for an adjournment. The case has been around for a long time, relating as it does to an alleged positive return to cobalt by a horse, Finally Free, trained by Mr Sues, on 5 May 2019, although charges were not laid until January of this year.

At the centre of the dispute is whether or not the positive return resulted from the giving to the horse a feed, Hygain Release, which allegedly contained cobalt.

It is asserted by Mr Sues that it is an issue which he raised with Mr Rod Newberry, who, at the relevant time, was a Stewards and, for a period, was conducting the investigation. Mr Newbery has since moved to a different occupation.

It is alleged by Mr Sues that the issue of whether the positive return resulted from the feeding of Hygain Release to Finally Free is central. There are said to be emails and other documents relating to this issue which are no longer in the possession of Mr Sues or on his computer. He alleges that they were sent by email to Mr Newbery.

The documents are not in the very extensive brief prepared by the Stewards. Mr Newbery can be contacted, but, most importantly, the emails and documents in question can be tracked down by the Stewards. It is not suggested by Mr Dinelli on their behalf that the documents have been destroyed or wiped permanently.

Mr Sues seeks to view the documents and have Mr Newbery available for cross examination. This is very much a last minute application in a case that has been on foot for a considerable period, even if the actual charges were not laid until January of this year. However, it is now essentially a simple issue in which the evidence of Mr Newbery and the availability of important documents potentially play a large role.

In all the circumstances, we will grant the application for the adjournment. However, given the history of the matter, we see no reason why any adjournment should be for a period which exceeds seven or eight weeks. We repeat that the evidence in question may have a direct bearing on what appears to be the central issue of the case. It is a pity that it was not raised earlier, particularly by Mr Sues.

We also take into account that no major inconvenience would appear to be covered by an adjournment. The case seems to be confined to a single issue, with a very limited number of witnesses.

The matter will be adjourned to Monday, 11 October 2022 and Tuesday, 12 October 2022.

Mark Howard  
Registrar, Victorian Racing Tribunal