11 March 2020

**DECISION**

**RACING VICTORIA**

**and**

**MS MELODY CUNNINGHAM**

 **Date of hearing:** 4 March 2020

**Panel:** Judge John Bowman (Chairperson), Ms Judy Bourke and Mr Des Gleeson.

**Appearances:** Mr Daniel Bolkunowicz instructed by Dion Villella appeared on behalf of the Stewards.

Mr Andrew Nicholl appeared on behalf of Ms Melody Cunningham.

**Charges:** 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.

 AR 104 Trainers must keep treatment records

**Particulars of charge: Charge 1**

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 Yankee Toff.
3. On 26 July 2019, Yankee Toff was brought to the Mildura racecourse and ran in the Lime Therapy Benchmark 58 Handicap over 1200 metres (the race).
4. A prohibited substance, being Heptaminol, was detected in a post-race urine sample taken from Yankee Toff following the running of the race.
5. Heptaminol is listed as a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 of the Australian Rules of Racing.

 **Charge 2**

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 Yankee Toff.
2. You failed to record the administration of Dynajec (which contains Heptaminol) to Yankee Toff that occurred on or around 23 July 2019 in accordance with the requirements of AR 104.

**Plea:** Guilty

**DECISION**

Mrs Melody Cunningham, you have pleaded ‘Guilty’ to two charges. The more serious of these is a breach of AR 240(2). The factual background is this is that Yankee Toff, trained by you, raced at Mildura on 26 July 2019. It in fact won the race. A post-race urine sample subsequently proved positive to a prohibited substance, namely Heptaminol. As we understand it, Heptaminol in a muscle relaxant.

We accept that the horse had been injected 3 days before racing and that this was a common practice for certain horses in your stables. You obtain the substance from a feed store and veterinary supplier. There has never been any problem with this sort of timetable in the past. Nevertheless, there is strict liability associated with the finding of this substance in a sample.

We also accept that you have been a trainer for some 23 years. No prior convictions were alleged against you. Thus, we treat you as having an unblemished record. You train a small team of horses with the assistance of your husband. You are also the supervisor at the Ballarat track. In addition, you provide after care support for horses at the Ballarat Equine Centre and also at your training establishment.

In short, you are deeply involved in racing and appear to be a credit to it. A reference from Dr Ian Fulton, veterinarian, contains references to you as an outstanding individual and a fine example as a small country trainer.

Specific deterrence is only a minor factor in this case. General deterrence is important. Trainers must appreciate the risks associated with the administration of prohibited substances such as this leading up to racing. A strict and cautious timetable should be applied.

We also appreciate that you are not particularly well off financially. You do a very good job with a small team of horses and also play an important role in other racing activities. We agree that the penalty for a breach of this nature for someone like you and with your record should be a fine.

Bearing all of this in mind, we agree with Mr Nicholl who represented you, that the appropriate figure is a fine of $1,000.

The failure to maintain proper records is on ongoing bugbear. On occasions, and this may be one of them, the absence of records can have a detrimental effect upon the defence of a charge. Certainly, it can make the work of Stewards very much harder. It is essential that careful and comprehensive records are kept.

In the circumstances we agree with Mr Bolkunowicz and this not contested by Mr Nicholl, that $500 is the appropriate fine for the breach under AR104.

Yankee Toff is disqualified as the winner of the race in question and the finishing order amended accordingly.

Mark Howard
Registrar, Victorian Racing Tribunal