22 December 2021

**DECISION**

**RACING VICTORIA**

**and**

**MITCHELL FREEDMAN**

**Date of hearing:** 16 December 2021

**Panel:** Judge John Bowman (Chairperson), Judge Kathryn Kings and Ms Judy Bourke.

**Appearances:** Mr Daniel Bolkunowicz appeared on behalf of the Stewards.

Mr Damian Sheales represented Mr Mitchell Freedman.

Mr Mitchell Freedman attended the hearing.

**Charges:** Australian Rule of Racing (“AR”) 245 states:

(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.

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 245**

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 Pearl de Vere.

1. On 28 June 2019, Peal De Vere ran in the LPA Lightning Fillies and Mares Benchmark 64 Handicap over 1200 metres at Geelong Racecourse (the race).
2. Prior to the race, you administered or caused to be administered Cobalt to Pearl de Vere, which was detected to be present and above the relevant threshold in a pre-race urine sample taken from Pearl de Vere prior to it running in the race.
3. Cobalt is a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 of the Australian Rules of Racing (Prohibited List B), subject to the threshold in Item 11 of Division 3 of Part 2 of Schedule 1 of the Australian Rules of Racing.

**Charge 2: AR 240(2) (Alternative to Charge 1)**

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 Pearl de Vere.
3. On 28 June 2019, Pearl de Vere was brought to the Geelong Racecourse and ran in the LPA Lightning Fillies and Mares Benchmark 64 Handicap over 1200 metres (the race).
4. Cobalt was detected to be present and above the relevant threshold in a pre-race urine sample taken from Pearl de Vere prior to i t running in the race.
5. Cobalt is a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 of the Australian Rules of Racing (Prohibited List B), subject to the threshold in Item 11 of Division 3 of Part 2 of Schedule 1 of the Australian Rules of Racing.

**Plea:** Guilty to Charge 1

**DECISION**

Mr Mitchell Freedman, you are pleading guilty to a breach of Australian Rule of Racing (“AR”) 245. It relates to a pre-race urine sample taken from “Pearl de Vere”, trained by you, which ran in Race 5 at Geelong on 28 June 2019. The sample proved positive to the prohibited substance, cobalt. A charge of a breach of AR 240(2) has been withdrawn.

It is not contested that a probable source of the cobalt was a feed product called “Hygain Release”. It was fed to the mare essentially every evening because of a risk of her tying up. The feeding of the horse, including with the Hygain Release, was performed by your foreman, Ms Lisa Matthews. There is no suggestion of any error or negligence on the part of Ms Matthews. There is no suggestion of any error, negligence or lack of supervision on your part. As we understand it, the feed Hygain Release has widespread use throughout the industry. No notice or warning has been sent to trainers or industry participants concerning Hygain Release. Thus, we have a situation where you, as trainer of Pearl de Vere, had done nothing wrong. There is no negligence, no lack of supervision and no turning of a blind eye to less than adequate stable practices. There is no question of some third party, such as a veterinary surgeon or a dietician, being involved or being left to their own devices without consultation or supervision.

Further, the Stewards do not dispute that, as outlined by one of their experts, Associate Professor Stuart Paine, the possible explanation for the detection of the cobalt above the threshold was the provision of the Hygain Release and, as outlined previously, this was a feed widely used and concerning which there was no warning, either on the packaging or within the industry, as to the possible higher than expected cobalt content.

Mr Daniel Bolkunowicz, on behalf of the Stewards, referred us to the decision of this Tribunal in the case of Mr Brendan McCarthy and the penalty imposed. We would point out the following. In that case, the prohibited substance was cocaine. A potential source of it was the fact that Mr McCarthy engaged and shared track riders and there were some suspicions concerning some track riders and drug habits. The Tribunal subsequently pointed out the following: -

*“You are also prepared to give people a chance and employ them, even if they have had problems, which is to your credit, but it involves some risk”.*

In the present case, there is no suggestion that you engaged in a course of conduct which, on the face of it, involved some risk.

We do not see this as a case where there has been behaviour, either directly or by reason of a lack of supervision or care, which has resulted in feeding or medication causing an elevated reading of a prohibited substance.

There is no behaviour or activity, or lack thereof, which provokes the necessity of sending a message to the industry or to the public. Nor need we concern ourselves as to matters of strict or absolute liability. There is a plea of guilty. The issue is one of appropriate penalty, over and above the disqualification of the horse from the race in question.

For all of the above reasons, we are unanimous in our view that no penalty should be imposed. We refer to the unusual circumstances of this case and we again emphasise the absence of any warning, notice or appropriate wording on the packaging or elsewhere and the absence of any negligence, lack of supervision or the like on your part.

Pearl de Vere is disqualified from Race 5 at Geelong on 28 June 2019 and the finishing order amended accordingly. No further penalty is imposed.

Mark Howard
Registrar, Victorian Racing Tribunal