31 March 2022

**DECISION**

**RACING VICTORIA**

**and**

**PAUL BANKS**

**Date of hearing:** Monday, 22 November 2021

**Panel:** Judge John Bowman (Chairperson), Judge Julie Nicholson and Ms Amanda Dickens.

**Appearances:** Mr Justin Hooper instructed by Mr Daniel Bolkunowicz appeared on behalf of the Stewards.

Mr Paul Banks represented himself.

**Charges & Particulars:**

**Coastal Chick charges**

**Charge One: AR 244**

**Administration of prohibited substance to affect race performance**

(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 for the purpose of affecting the performance or behaviour of the horse in a race, or of preventing it starting in a race.

If a person breaches subrule (1), a disqualification for a period of not less than 3 years must be imposed, unless there is a finding that a special circumstance exists, in which case that penalty may be reduced.

**Particulars of Charge**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. At all relevant times, you were the trainer of *Coastal Chic.*
3. On 15 September 2018*, Coastal Chic* ran in the Bourke Builders 0-58 Handicap over 2800 metres at the Echuca racecourse (the race).
4. Prior to the race you administered, or caused to be administered, to *Coastal Chic* a prohibited substance, being alkalinising agents as evidenced by total carbon dioxide (TC02) at a concentration in excess of 36.0 millimoles per litre in plasma, for the purpose of affecting the performance or behaviour of *Coastal Chic* in the race.
5. Alkalinising agents are a prohibited substance pursuant to Item 2(g) of Division 1 of Part 2 of Schedule 1 of the Australian Rules of Racing, subject to the threshold in Item 1 of Division 3 of Part 2 of Schedule 1 of the Australian Rules of Racing.

**Charge Two: (AR) 245 [Alternative to Charge One]**

*AR 245 Administration of prohibited substance in sample taken from horse before/after running in race*

1. A person must not:
	1. administer; or
	2. 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. At all relevant times, you were the trainer of *Coastal Chic.*
3. On 15 September 2018*, Coastal Chic* ran in the Bourke Builders 0-58 Handicap over 2800 metres at the Echuca racecourse (the race).
4. Prior to the race you administered, or caused to be administered, to *Coastal Chic* a prohibited substance, being alkalinising agents as evidenced by total carbon dioxide (TC02) at a concentration in excess of 36.0 millimoles per litre in plasma, which was detected in a blood sample taken from *Coastal Chic* prior to the running of the race.
5. Alkalinising agents are a prohibited substance pursuant to Item 2(g) of Division 1 of Part 2 of Schedule 1 of the Australian Rules of Racing, subject to the threshold in Item 1 of Division 3 of Part 2 of Schedule 1 of the Australian Rules of Racing.

**Charge Three: AR 240 (2) [Alternative to Charges One and Two]**

*AR 240 Prohibited substance in sample taken from horse at race meeting*

1. 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. At all relevant times, you were the trainer of *Coastal Chic.*
3. On 15 September 2018*, Coastal Chic* ran in the Bourke Builders 0-58 Handicap over 2800 metres at the Echuca racecourse (the race).
4. A prohibited substance, being alkalinising agents as evidenced by a total carbon dioxide (TC02) concentration in excess of 36.0 millimoles per litre in plasma, was detected in a blood sample taken from *Coastal Chic* prior to the running of the race.
5. Alkalinising agents are a prohibited substance pursuant to Item 2(g) of Division 1 of Part 2 of Schedule 1 of the Australian Rules of Racing, subject to the threshold in Item 1 of Division 3 of Part 2 of Schedule 1 of the Australian Rules of Racing.

**Rex Bell Charges**

**Charge One: AR 240(2)**

*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 were at all relevant times, the trainer of Rex Bell.
3. On 30 September 2019, Rex Bell was brought to the Geelong Racecourse and ran in the Shojun Concrete Benchmark 58 Handicap over 2255 metres (the race).
4. A prohibited substance, being Meloxicam, was detected in a post-race blood sample taken from Rex Bell following the running of the race.
5. Meloxicam is listed as a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 of the Australian Rules of Racing.

**Charge Two: AR 240 (2) – Rex Bell**

*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. 2. You were at all relevant times, the trainer of Rex Bell.
3. 3. On 23 October 2019, Rex Bell was brought to the Geelong Racecourse and ran in the Avalon Airport Benchmark 70 Handicap over 2400 metres (the race).
4. 4. A prohibited substance, being Meloxicam, was detected in a pre-race blood sample taken from Rex Bell prior to the running of the race.
5. 5. Meloxicam is listed as a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 of the Australian Rules of Racing.

**Pleas:** **Coastal Chick charges**

Not Guilty charge 1 and Guilty charge 2

**Rex Bell charges**

Not Guilty charge 1 and Guilty charge 2

**DECISION**

**1. Background**

Mr Paul Banks, we have been dealing with two separate cases involving horses trained by you. Each involves a prohibited substance.

The earlier charge relates to a breach of AR 245. A swab taken from *Coastal Chic*, which ran at Echuca on 15 September 2018, proved positive to the presence of a prohibited substance, being alkalising agents in excess of the prescribe level. At a hearing before us, you pleaded guilty to such breach. A charge of a breach of AR 244 – administration for the purpose of affecting performance – was contested and dismissed. We would refer to our earlier decision released on 20 October 2021 in this regard.

Because you had two charges to be heard in relation to positive returns to meloxicam involving another horse (*Rex Bell*) trained by you, it was agreed by the parties that the penalty hearing for *Coastal Chic* should be adjourned until the completion of the *Rex Bell* hearing. That has now been concluded, save for our findings on penalty.

The *Rex Bell* cases involve returns positive to meloxicam following the runs of that horse at Geelong on 30 September 2019 and on 23 October 2019. A charge based upon a breach of AR 240 was laid in each instance. We found each charge proven.

Submissions in relation to penalty for the breach of AR 245 (*Coastal Chic)* and the penalties for the two breaches of AR 240 (*Rex Bell*) were then made.

We turn now to our findings.

**2. The *Coastal Chic* case**

A breach of AR 245 is a serious charge. As stated, we found you not guilty of the considerably more serious charge of administration for the purpose of affecting performance. However, a breach of AR 245 can result in a range of penalties, including a substantial period of disqualification or suspension. Much depends upon the circumstances. The image of racing as a drug free industry remains a major consideration.

Mr Hooper, on behalf of the Stewards, submitted that the appropriate penalty is suspension for six weeks. We say now that we are of the view that such a penalty is a little too severe in the circumstances. We also say that some suspension is warranted.

You are aged 52 years. In addition to being a horse trainer of more than twenty years standing, you are a highly successful businessman. Your record in the racing industry is very good. We would refer to our observations concerning you in our earlier decision.

This is not a case where there was no fault. As we stated in our earlier decision, you accept that the positive return resulted from an error on your part. When feeding bran and molasses to *Coastal Chic* on race morning, you noticed, in the bottom of her bowl, powder, which would have been Salkavite, a “bicarb”. You did not believe that there was enough to cause a problem and thought no more about it. That was clearly an error.

Weighing up all the factors and circumstances, we are of the view that a period of suspension of four weeks is warranted.

**3. The *Rex Bell* cases**

As set out above, each of these involves a breach of AR 240. We have found each charge proven. The ingredients of each have been made out. As we pointed out at the end of your submissions, cases such as these essentially involve strict, if not absolute liability. On each occasion, *Rex Bell* returned a positive swab to a prohibited substance, meloxicam. There is no suggestion of deliberate or accidental administration by yourself, so as to attract the operation of AR244 or AR245. There is no suggestion of any flaw or mistake in the sampling or testing procedures, or of any error in the assessment. Presentation has been established.

Presentation being an offence is part of the regulatory system designed to ensure that racing is conducted on a level playing field. AR 240 may not carry penalties potentially of the same magnitude as AR 244 and AR 245. However, it is an important Rule.

On each charge of a return positive to Meloxicam and thus a breach of AR 240, you are fined the sum of $4,000. We agree with the Stewards that there should be some concurrency of the financial penalties. Thus, on Charge One (the offence of 30 September 2019), you are fined $4,000. On Charge Two (the offence of 23 October 2019), you are also fined $4,000, but $3,000 of that is suspended for a period of 12 months on the basis that there is no further breach of the Rule during that period. We are confident that there will not be such a breach.

**4. Conclusion**

In summary, on these charges, and as set out above, you are suspended for a period of four weeks in relation to *Coastal Chic*. You are fined $8,000 in relation to *Rex Bell*, but $3,000 of that is suspended for a period of 12 months.

Mark Howard
Registrar, Victorian Racing Tribunal