25 February 2021

**DECISION**

**RACING VICTORIA**

**and**

**PETER GELAGOTIS**

**Dates of hearings:** 30 November 2020 and 1 December 2020

**Panel:** Judge John Bowman (Chairperson), Justice Shane Marshall (Deputy Chairperson) and Ms Judy Bourke.

**Appearances:** Ms Amy Wood, instructed by Mr Daniel Bolkunowicz, appeared on behalf of the Stewards.

Mr Damien Sheales represented Mr Peter Gelagotis.

Mr Peter Gelagotis appeared as a witness.

Ms Caitlin King appeared as a witness.

Ms Tracey McMurtry appeared as a witness.

Ms Jennette Smith appeared as a witness.

Ms Ann Dicey appeared as a witness.

Mr Gary Hollier appeared as a witness.

Mr Ronald Thomas appeared as a witness.

**Charges:** Australian Rule of Racing (“AR”) 244 states:

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

(2) 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.

AR 245 states:

(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.

(2) If:

1. testosterone (including both free testosterone and testosterone liberated from its conjugates) above the mass concentration set out in paragraph 7(a) or (b) of Schedule 1, Part 2, Division 3 (as applicable); or
2. hydrocortisone above the mass concentration set out in paragraph 6 of Schedule 1, Part 2, Division 3, is detected in a sample taken from a horse prior to or following its running in any race, a PRA or the Stewards retain a discretion to find that a breach of subrule (1) has not been committed if, on the basis of scientific and analytical evidence available to them, they are satisfied that the level in the sample was of endogenous origin and/or as a result of endogenous activity.

AR 240(2) states:

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**

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 Strong Influence.
3. On 26 June 2019, Strong Influence ran in the The Big Screen Company Handicap over 1300 metres (the race) at the Sandown racecourse.
4. Prior to the race you administered, or caused to be administered, to Strong Influence a prohibited substance, being alkalinising agents as evidenced by total carbon dioxide (TCO2) at a concentration in excess of 36.0 millimoles per litre in plasma, for the purpose of affecting the performance or behaviour of Strong Influence in the race.
5. Alkalinising agents are a prohibited substance pursuant to 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 2 (Alternative to 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 Strong Influence.
3. On 26 June 2019, Strong Influence ran in the The Big Screen Company Handicap over 1300 metres (the race) at the Sandown racecourse.
4. Prior to the race you administered, or caused to be administered, to Strong Influence a prohibited substance, being alkalinising agents as evidenced by total carbon dioxide (TCO2) at a concentration in excess of 36.0 millimoles per litre in plasma.
5. Alkalinising agents are a prohibited substance pursuant to 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 3 (Alternative to Charges 1 and 2)**

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 Strong Influence.
3. On 26 June 2019, Strong Influence was brought to the Sandown racecourse and ran in the The Big Screen Company Handicap over 1300 metres (the race).
4. A prohibited substance, being alkalinising agents as evidenced by a total carbon dioxide (TCO2) concentration in excess of 36.0 millimoles per litre in plasma, was detected in a blood sample taken from Strong Influence prior to the running of the race.
5. Alkalinising agents are a prohibited substance pursuant to 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.

**Plea:** Not Guilty to Charges 1 and 2

Guilty to Charge 3

**DECISION**

Licensed trainer Mr Peter Gelagotis is facing three alternative charges. He has been charged with a breach of Australian Rule of Racing (“AR”) 244 – the administration of a prohibited substance to affect race performance. The second charge, being an alternative, is a breach of AR 245 – the administration of a prohibited substance in a sample taken before or after the running of a race. The third charge, being a further alternative, is pursuant to AR 240. This could be summarised as a prohibited substance being found in a sample taken from a horse at a race meeting. Thus, the charge could be described as being in descending order of severity – administration for the purposes of affecting performance; administration; and the detection of a prohibited substance.

Mr Gelagotis pleaded not guilty to charges one and two, but guilty to charge three – that is being the trainer of a horse, which, when tested prior to or following the running of a race, proved positive to the presence of a prohibited substance.

The factual background is that Mr Gelagotis was the trainer of “Strong Influence”. That horse ran in a 1300 metre race at Sandown on 26 June 2019. Prior to the running of the race, a blood sample was taken from it. This proved positive to the presence of a prohibited substance, namely an alkalinising agent. The total TC02 (carbon dioxide) concentration exceeded 38.0 millimetres per litre in plasma.

Ms Amy Wood of Counsel appeared on behalf of the Stewards. Mr Damien Sheales of Counsel appeared on behalf of Mr Gelagotis. There was no challenge to the manner in which the sample was obtained or the testing procedure. There was no challenge to the basic proposition that the presence of a prohibited substance had been found as the result of the taking of a pre-race sample. The dispute essentially revolves around the issue of administration and whether either charge one or charge two has been made out.

We say at the outset that we found Mr Gelagotis to be a credible, if somewhat nervous and talkative, witness.

Mr Gelagotis was first interviewed by Stewards on 29 June 2019, three days after the race and testing in question. The positive result of the initial testing of the sample were put to him. He had no explanation for the positive sample, saying “That’s unreal…I can’t believe that”. He pointed out that his horses were regularly tested. He could recall the testing on the day in question, as the horse had proved difficult to blood. Mr Gelagotis’ treatment diaries were examined. They seem to have been comprehensive and revealed nothing out of the ordinary. One product called Cryovac was an electrolyte replacement which contains some alkalising agent. Mr Gelagotis told the Stewards that this was administered in accordance with the appropriate timetable – that is, up until one clear day before racing.

Mr Gelagotis told Stewards that on the day in question Strong Influence was either favourite or second favourite and ran third, beaten half a length. He does not bet and did not support it. He also stated that he fills in his treatment diaries diligently and this does not seem to have been disputed. Mr Gelagotis stated that the stomach tubing equipment was kept at his mother’s house, which is not far from the stables. He claimed that he was following the advice of the Stewards to not leave it lying around.

Overall Mr Gelagotis said that he was “shattered” and could not understand how the situation had arisen.

Mr Gelagotis was interviewed again on 2 July 2019. The Stewards had received a confirmatory report concerning the positive return. Mr Gelagotis had pursued some lines of enquiry, but was still at a loss to explain the reading.

Mr Gelagotis was again interviewed on 4 July 2019. It appears that Mr Gelagotis had contacted Dr Grace Forbes, the General Manager of Veterinary Services, and discussed what could possibly explain the reading. He had also contacted Dr John McCaffrey, former Chief Veterinarian, with similar queries. It seems apparent Mr Gelagotis was very concerned and anxious about the situation. The method employed by him when he has stomach tubed horses was discussed.

Mr Gelagotis was further interviewed on 11 July 2019. Stewards confirmed that Strong Influence had been the subject of blood samples taken in relation to TC02 on 7 November 2018 and 12 December 2018. At the time, Strong Influence was at the Caulfield Stables. Both results were within normal levels. Various products that Mr Gelagotis had used over the years were discussed.

Stewards interviewed Mr Gelagotis for the final time on 20 August 2019. This was particularly in relation to a product called DMG, which was used in relation to Strong Influence. This appears to have been for muscle stiffness. This had been administered by the foreman, Mr Gory, and, to the best of Mr Gelagotis’ knowledge, in accordance with the Rules. In our opinion, nothing in this interview takes matters any further.

We have summarised the numerous interviews with Mr Gelagotis for the following reasons. Firstly, his evidence before us was essentially in accordance with the context of the interviews. Secondly, we accept that he was both mystified and very concerned in relation to the reading returned by Strong Influence. Thirdly, the interviews reveal the lengths to which he was prepared to go in order to find an explanation for the elevated reading. He discussed the situation with veterinarians (including Dr Grace Forbes, General Manager of Veterinary Services). He also enquired of others in the industry, including his own staff. We accept that he was both shocked and understandably worried in relation to the elevated reading and went to considerable trouble in trying to understand the situation and find an explanation.

Stewards also interviewed a number of employees of Mr Gelagotis. These included Mr Gary Hollier, who could be described as Mr Gelagotis’ stable manager at Moe, where Strong Influence was stabled at the relevant time. Mr Hollier was in fact interviewed on four occasions. Mr Hollier also gave oral evidence. We have no reason to doubt its accuracy. We shall return to it.

Further, the Stewards interviewed Ms Caitlin King, a track rider, who worked almost full time at the Moe stables at the relevant time. She was a registered stable employee there. She strapped Strong Influence at Sandown on 26 June 2019. She accompanied Mr Gelagotis in the truck or float on the day. There was no one else at the stalls when she had arrived there. The truck did not stop on the way to Sandown. Her oral evidence supported the above proposition. We accept her as a witness of truth.

Ms Tracy McMurtry, licensed stable employee, was interview by Stewards and gave oral evidence. She is an employee of Mr Gelagotis. She had never seen a horse stomach tubed at the stables. She was not particularly aware of medications that were administered. Strong Influence was not at the track for work on 26 June 2019 because it was racing that day. When she returned to the stables, she did not see it being given any medications. Ms McMurtry referred to Mr Gelagotis as being “so responsible” and always making sure that things were handled properly. No one travels in the back with the horses on the way to the races. Her oral evidence did not take matters much further.

Ms Jeanette Smith, registered stable employee, was also interviewed and gave oral evidence. She works for Mr Gelagotis basically each morning of the week and frequently afternoons. She does a considerable amount of cleaning in and around the stables, as well as helping with the horses. She did not attend to Strong Influence on the relevant day. She has never stomach drenched a horse and had never seen Mr Gelagotis stomach drench Strong Influence. Ms Smith’s oral evidence did not take matters much further.

Ms Ann Dicey, registered stable employee, worked for Mr Gelagotis essentially of a morning. She recalled nothing unusual about the morning of 26 June 2019, either in relation to Strong Influence or to Mr Gelagotis. She had never seen Mr Gelagotis stomach tube a horse prior to or on 26 June 2019. She had never seen Mr Gary Hollier stomach tube a horse, or seen the stomach tubing equipment at the stables. Further, she had never seen Mr Gelagotis feed a horse “bicarb”. It should be added that Ms Dicey has previously worked for some very big racing establishments and seemed quite knowledgeable. Ms Dicey’s oral evidence to us effectively confirmed what she had told the Stewards.

Stewards interviewed Mr Ronald Thomas, who, with his wife, own Strong Influence. Mr Thomas also gave oral evidence before us, and was a most impressive witness. He told Stewards that Mr Gelagotis had talked to him about the situation. He was upset and baffled. Mr Thomas said that he and his wife were “a hundred per cent” supportive of Mr Gelagotis and his stable. Before us, he said that he and his wife own and race some 17 racehorses, apart from broodmares and foals. They use 11 different trainers and have had horses with Mr Gelagotis for four years. They performed due diligence investigation before sending horses to him to train. Prior to Strong Influence running on 26 June 2019, Mr Thomas had spoken to Mr Gelagotis. He believed that the horse would be “in the finish”. They did not back the horse. Mr and Mrs Thomas have continued to have horses with Mr Gelagotis and are “exceptionally comfortable” in so doing. To Mr Thomas’ knowledge, Mr Gelagotis had never had a bet on one of their horses. He spoke of Mr Gelagotis having honesty and integrity.

We now return to Mr Hollier, the stable manager, who was the last employee of Mr Gelagotis to give evidence. He had been interviewed on four occasions. The earliest was on 29 June 2019. He had been employed by Mr Gelagotis for seven years. He said that he could not stomach tube horses. He could not recall Strong Influence being stomach tubed. Mr Hollier was not at the stables on 29 June 2019. He had not been present on the previous two days. He had been in Bairnsdale looking after his grandchildren. He has assisted Mr Gelagotis with stomach tubing from time to time. One of his responsibilities is making up feed, and he was able to describe the feed given to Strong Influence. It would normally receive a daily scoop of DMG for three days, ceasing three days before racing. A scoop would be 40 grams. Various other medications were looked at by the Stewards and Mr Hollier.

Mr Hollier was interviewed again on 30 June 2019. He rang the Stewards to correct what he had told them about being away in Bairnsdale. That had been the previous week. He could not recall stomach drenching Strong Influence, but obviously would have assisted Mr Gelagotis, who could not do it on his own.

Mr Hollier was interviewed for the third time on 4 July 2019. Apparently, for a drench, Mr Gelagotis uses Ultimate Electrolyte Replacer. If a horse was racing on a Saturday, it would be drenched on a Wednesday. It must be said that Mr Hollier’s recollection of dates, times and events was far from precise of perfect. Strong Influence would normally be trained and drenched in its box. It was stomach drenched on 24 June 2019.

On 20 August 2019, Mr Hollier was interviewed for the fourth time. He assumed Mr Gelagotis had the DMG as a replacement for an injectable substance. Mr Hollier said that he was a punter. He backs horses on the basis of his own judgement and watching them work and seeing how they are eating and the like. He had $500 on Strong Influence on the relevant day (on one occasion he had $1,000 on Winx). He backs most of Mr Gelagotis’ horses. He had backed Strong Influence to the extent of $100 each way when it won at its previous start. He had won $8,000 a few months before. He had in fact won $14,000 not long before these events. The bets are all his own. No one else has access to his betting accounts.

Mr Hollier also gave oral evidence. He emphasised that Mr Gelagotis complies with the Rules. Stomach tubing was performed with a drench “three days out”. Strong Influence was stomach tubed on 24 June 2019 at about 5pm. He was a very difficult horse and needed two people to handle him.

We have summarised the interviews with Mr Gelagotis at some length. He also gave evidence, much of which did not take matters further, but re-affirmed what he had said when interviewed. However, he stated that Strong Influence was highly strung and had to be handled carefully. It was stomach tubed on 24 June 2019. Mr Gelagotis could not do this on his own. On 26 June 2019, he went to the track, returning at about 8-8.30am. He stayed in the stables whilst horses were on the treadmill. He would never leave horses on a treadmill. He went home at about 10.45am. He got changed and ultimately left for the races. He knew that the veterinary surgeon would be calling and Mr Hollier would attend to her. His horses got swabbed more often than not and he expected Strong Influence to be swabbed. He is in charge of the training regime at Moe and very aware of the relevant TC02 levels. His mother’s house is about 40 metres from the stables. He leaves the stomach tubing equipment there. He does not live there himself.

We have summarised the evidence at length. This is perhaps necessary in a situation where there is absolutely no explanation for an illegally high reading. We accept that Mr Gelagotis has understandably been worried by this case and has sought an explanation. He has spoken to eminent veterinary surgeon Dr Grace Forbes and Dr John McCaffrey. He has contacted Mr Andrew Nicholl from the Trainers Association. He has interviewed staff. This remains a case with no obvious explanation.

Ms Wood, in her closing address, argued that the only plausible explanation is undocumented administration within one clear day of the swab sample being taken. Even if that is so, the question remains, by whom? Further, can we be comfortably satisfied that the administration was by Mr Gelagotis or on his orders? Was it done with his knowledge? In our opinion, we cannot be comfortably satisfied that the evidence supports a conclusion that any administration was done by Mr Gelagotis, on his orders or with his knowledge.

At times, there has been some speculation as to whether the administration might have been performed by someone with a grudge or conducting a vendetta against Mr Gelagotis or by a random intruder. Such speculation has led nowhere. We read nothing into the fact that the stomach tubing equipment was not located in the stables, but at the house of Mr Gelagotis’ mother. It is to be remembered that Mr Gelagotis not only informed Stewards that the equipment was in his mother’s house some 40 metres from the stables, but took them there and showed the equipment to them. We attach no significance to the location of the equipment.

In short, we are not comfortably satisfied that either of the administration charges have been made out or proven against Mr Gelagotis. The cause of the high reading remains a mystery. We accept Mr Gelagotis and his staff members, along with Mr Thomas, as witnesses of truth.

The charges pursuant to AR 244 and AR 245 are dismissed. Mr Gelagotis has pleaded guilty to a breach of AR 240. We shall hear the parties on the question of penalty in relation to that breach.

Mark Howard
Registrar, Victorian Racing Tribunal