12 November 2021

**DECISION**

**RACING VICTORIA**

**and**

**PETER GELAGOTIS**

**Date of penalty hearing:** 18 October 2021

**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**

Mr Peter Gelagotis, you have pleaded guilty to a charge of breaching of AR 240.

The particulars are that you brought *Strong Influence*, trained by you, to Sandown racecourse on 26 June 2019, where it competed in The Big Screen Company Handicap. A blood sample taken from the horse prior to the race revealed the presence of alkalising agents in excess of 36.0 millimoles per litre in plasma. The sample taken in fact showed a concentration in excess of 38.0 millimoles.

In essence, you are unable to explain the positive swab. You had administered an alkalising agent, Cryovac, to the horse in accordance with the appropriate timetable, but were completely unable to explain the high reading and were shocked by it.

You were also charged with alternative charges of administration, which you contested, and in relation to which we found you to be not guilty. We would refer to our previous decision of 25 February 2021. The circumstances of what occurred and our findings are there set out in greater detail.

In pleading guilty to this charge, you are accepting responsibility for bringing the horse to the racecourse when it was not free of the prohibited substance.

As we stated in our decision of 25 February last, we found you to be a credible witness and we accept that you were, as you said, “shattered” by the inexplicably elevated reading. We accept that you pursued your own lines of enquiry with veterinary surgeons and with others in the industry. We accept that you have been shocked and worried. You called as a witness Mr Ronald Thomas, who, with his wife, owned *Strong Influence.* Mr Thomas and his wife own and race a considerable number of horses with a number of trainers. He spoke in glowing terms of your honesty and integrity.

We have borne all of the above in mind. However, as has been said in many of these cases, a rule such as this is most important in the industry’s endeavours to ensure both the reality and the appearance of a level playing field. Trainers must exercise great care and vigilance in order to ensure compliance with the Rules. General deterrence is an important consideration.

Turning to your particular case, you do not have an unblemished record in relation to matters of this nature.

On 14 June 2013, the Racing Appeals and Disciplinary Board fined you the sum of $2,000 for a breach of AR 178, which could be described as the predecessor of AR 240. This resulted from a horse trained by you returning a swab positive to Ibuprofen. The Board specifically stated that it was not required to establish how this had happened and was satisfied that it was accidental. It stated that the onus was on you to establish a system that eliminated risk.

On 29 May 2015, the Board suspended you for a period of three months for a breach of AR 178E (1), which was a Rule relating to the administration of medication to a horse on race day. The substance involved was a branch chain amino acid. The Board pointed out, as we are now doing, that you did not have an unblemished record. We are fully aware that this previous offence related to administration, as opposed to presentation, but it is nevertheless relevant.

Bearing all of the above in mind, we are of the opinion that a period of suspension is warranted. As was stated by the RAD Board, the onus was on you to have in place a system that eliminated risk and it is apparent that you failed so to do. However, again bearing in mind all of the circumstances, we have reached the conclusion that you should be suspended for a period of six weeks.

In addition, *Strong Influence* is disqualified from The Big Screen Handicap at Sandown on 26 June 2019 and the finishing order is amended accordingly. Note – by joint agreement the commencement date of the suspension will start from 19 November 2021.

Mark Howard
Registrar, Victorian Racing Tribunal