1 February 2022

**DECISION**

**RACING VICTORIA**

**and**

**ARCHIE ALEXANDER**

**Date of hearing:** 29 November 2021

**Panel:** Judge John Bowman (Chairperson), Justice Shane Marshall (Deputy Chairperson) and Mr Des Gleeson.

**Appearances:** Mr Andrew Bell, instructed by Mr Daniel Bolkunowicz, appeared on behalf of the Stewards.

Mr Rahman de Kretser, instructed by Mr Jack O’Connor appeared on behalf of Mr Archie Alexander.

Dr Grace Forbes appeared as a witness.

Mr Archie Alexander appeared as a witness.

Mr John Vanden Nieuwboer appeared as a witness.

Mr Terry Henderson appeared as a witness.

Mr Lachlan McKenzie appeared as a witness.

**Charges:** Australian Rule of Racing (“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.

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: AR 245**

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 Tom’s Knight.
3. On 2 November 2018, Tom’s Knight ran in the Bet365 Protest Promise Maiden Plate over 1200 metres at Kilmore Racecourse (the race).
4. Prior to the race, you administered or caused to be administered, to Tom’s Knight cobalt, which was detected in a post-race urine sample (above the threshold level) taken from Tom’s Knight following the running of 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).

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

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 Tom’s Knight.
3. On 2 November 2018, Tom’s Knight was brought to the Kilmore racecourse and ran in the Bet365 Protest Promise Maiden Plate over 1200 metres (the race).
4. A prohibited substance, being cobalt at a concentration in excess of 100 micrograms per litre in urine, was detected in a post-race urine sample taken from Tom’s Knight following the running of 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 ON PENALTY**

1. This decision should be read together with the Tribunal’s decision on 22 December 2021 in which the Tribunal made findings of fact relevant to Mr Alexander’s plea of guilty to an administration charge under Australian Racing Rule (“AR”) 245(1).
2. The guilty plea to the administration charge was based on the view of Mr Alexander that the positive swab resulted from the usual feeding regime given to the horse, “Tom’s Knight”. In its decision of 22 December 2021, in what was essentially a contested plea, the Tribunal found that the positive swab did not arise as a result of the usual feeding regime. It also found that Mr Alexander, or anyone on his behalf, did not administer an extra cobalt containing substance outside the usual feeding regime. It further found that cobalt was administered to the horse over and above the usual feeding regime by a person or persons unknown and not at the direction of Mr Alexander.
3. General deterrence is an important consideration in the exercise of our sentencing discretion. Specific deterrence is arguably a lesser factor. As the Tribunal said in its decision of 22 December 2021, the presence of cobalt in a prohibited amount “remains a mystery” as to its cause. However, Mr Alexander had a discussion with Steward Mr Dion Villella approximately one year before the positive return from Tom’s Knight. Mr Villella alerted him to a possible cobalt problem. Following that discussion, Mr Alexander made inquires with the manufacturer of what he described as the “quite boutique” product involved. He was assured that no risk in relation to cobalt existed. The amount of cobalt in the product was described as “not excessive”. He continued to use the “quite boutique” product. He was aware that there was a small amount of cobalt in it, but assumed that it was “ok” to use it. In other words, he took that risk, even if he thought it was minimal. Put simply, a possible cobalt problem had been brought to Mr Alexanders’ attention, even if the origin of it was not part of the usual feeding regime.
4. In the matter of Gelagotis, the Tribunal imposed a penalty of 6 weeks suspension in circumstances where the trainer could not explain the source of an elevated level of TC02. The Tribunal noted that Mr Gelagotis failed to have a system in place that eliminated the relevant risk. There was no similar finding against Mr Alexander, although if persons unknown may have been responsible, it appears that Mr Alexander’s system did not eliminate that risk. However, in considering the penalty to be imposed on Mr Gelagotis, the Tribunal took into account a prior offence for administration of a prohibited substance on race day. That offence occurred in 2015. There was also a prior offence in 2013 which was of an accidental nature, but where there was reference to Mr Gelagotis’ failure to eliminate the risk.
5. The Stewards also referred us to the matter of Andrews. In that case the offence involved administration. The offending substance was widely used in the trainer’s stable. The administration occurred at the trainer’s direction. He pleaded not guilty before the RADB. The circumstances of that case led VCAT to impose an effective three month’s suspension.
6. The Stewards made reference also to the decision in 2005 by the Racing Appeals Tribunal in the matter of Vasil. That case also involved elevated levels of TC02. Negligence by Mr Vasil was found and he also pleaded not guilty. He was suspended for 6 weeks. In the present case, there has been no positive finding of negligence by Mr Alexander and he has pleaded guilty.
7. Additional reference was made by the Stewards to the matter of Mitchell Freedman, where the Tribunal found that a high reading of cobalt was caused by feed given to the horse. No penalty was imposed. The Tribunal did not identify any fault by the trainer. There had been no prior discussions with a Steward or warning of any kind and he was using standard products.

1. In setting a penalty in this matter, we take into account the good character of Mr Alexander as attested to by character witnesses. We also take into account the considerable delay in the filing of the charges and the effect that this had on Mr Alexander’s business by reason of loss of some clientele.
2. Mr Alexander has one relevant prior offence in 2015. It concerned a breach of AR 178 and related to the presentation of a horse with ibuprofen in its system. The ibuprofen had remained in the horses system longer than expected. A relatively small fine of $500 was imposed.
3. Mr Alexander’s culpability is at the low end of the range for a breach of AR 245 (1). Mr Alexander has also been in no further trouble involving a prohibited substance since this offence, which occurred in 2018.
4. In all the circumstances, we impose a penalty of six weeks suspension on Mr Alexander, fully suspended for a period of 24 months on the condition that he not breach any provision of the Rules of Racing dealing with prohibited substances in that period. In addition, we impose a fine of $3,000.
5. Furthermore, Tom’s Knight is disqualified from race 3 at Kilmore on 2 November 2018 and the placings are adjusted accordingly.

Mark Howard  
Registrar, Victorian Racing Tribunal