27 July 2023

**DECISION**

**RACING VICTORIA**

**and**

**JOHN LEEK JNR**

**Date of hearing:** 20 July 2023

**Panel:** Justice Shane Marshall (Deputy Chairperson) and Ms Heidi Keighran.

**Appearances:** Mr Marwan El-Asmar appeared on behalf of the Stewards.

Mr John Leek Jnr represented himself.

**Charge:** Australian Racing Rule (“AR”) 240(2) states:

 **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:** **Charge 1 – AR240(2)**

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria and bound by the Rules of Racing.
2. You are, and were at all relevant times, the trainer of Fengarada (the Horse).
3. On 9 September 2022, the Horse was brought to the Swan Hill Racecourse and was engaged to race in the Busbix.net.au BM78 Handicap – Murray Mallee Stayers Final (race 6) over 2400 metres (the Race).
4. On 9 September 2022, prior to the Race, a urine sample (V776650) was taken from the Horse (the Sample).
5. An analysis of the Sample detected the presence of Phenylbutazone and its metabolites, Oxyphenbutazone and Gammahydroxyphenylbutazone. 2
6. Phenylbutazone is a prohibited substance pursuant to Division 1 of Part 2 of Schedule 1 (Prohibited list B) of the Rules of Racing.

**Plea:** Guilty

**DECISION**

1. Mr John Leek Jnr is a registered trainer and at all material times was the owner and trainer of the horse Fengarada. Fengarada was due to compete in Race 6 at Swan Hill on 9 September 2022. However, the meeting did not continue to allow Race 6 to be run as a result of heavy rain making the track unsafe for racing.
2. A urine swab was taken from Fengarada. The swab showed the presence of Phenylbutazone, (known also as “Bute”) and its metabolites. Bute is an non-steroidal anti-inflammatory drug which provides pain relief to horses. It is a prohibited substance under the Rules of Racing. It has the capacity to prevent a horse from displaying the normal protective responses to pain, thereby putting the horse at the risk of a catastrophic result.
3. Stewards of Racing Victoria have charged Mr Leek under Australian Racing Rule (“AR”) 240(2) with presenting a horse for an event while not free of a prohibited substance. He has also been charged with an offence under AR 104(1) with failing to properly keep and maintain treatment records. Mr Leek has pleaded guilty to both charges.
4. The exact source of the contamination remains a mystery. It is possible that the prohibited substances were inadvertently administered by one, of Mr Leek, his wife (also a registered trainer) or his son (a registered stablehand). Each of those people has access to a common feeding room on a property shared by Mr Leek and Ms Leek as separate trainers responsible for various horses at the premises. However, the offence is one of absolute liability and Mr Leek does not contest the charge, albeit being at a loss to explain the presence of Bute. In 40 years of training Mr Leek Jnr has never had any of his horses test positive to Bute before.
5. When Stewards conducted the stable inspection in response to the positive swab, they inspected the treatment book on the premises. It was a joint one for both trainers where each trainer was obliged to have his or her own treatment book. The treatment book failed to mention certain treatments and did not give all the details required by AR 104(2). Mr Leek acknowledged his deficiencies and intends to remedy them in the future.
6. In setting penalties, we are informed by general and specific deterrence and the need to maintain a level playing field by keeping a drug free industry. We also take into account the guilty pleas and Mr Leek’s remorse and his good record in the last 18 years concerning prohibited substances.
7. In all the circumstances, we impose the following penalties. On Charge 1, we impose a penalty of $4,000. In so doing we have regard to the good record of Mr Leek including his lack of recent relevant prior offending. On Charge 2, we impose a penalty of $500.

Mark Howard

Registrar, Victorian Racing Tribunal