1 September 2023

**DECISION**

**RACING VICTORIA**

**and**

**PETER MOODY**

**Date of hearing:** 28 August 2023

**Panel:** Judge John Bowman (Chairperson) and Ms Judy Bourke.

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

Mr Peter Jurkovsky appeared on behalf of Mr Peter Moody.

**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 a person bound by the Rules of Racing.

2. You were, at all relevant times, the trainer of Brereton (the Horse).

3. On 13 May 2023, the Horse was brought to the Flemington Racecourse and was engaged to race in Race 6, the Hilton Nicholas Straight Six, over 1200 metres (the Race).

4. On 13 May 2023, prior to the Race, a blood sample (V677828) was taken from the Horse (the Sample).

5. An analysis of the Sample detected the presence of Phenylbutazone and Oxyphenbutazone.

6. Phenylbutazone is a prohibited substances pursuant to Division 1 of Part 2 of Schedule 1 (Prohibited list B) of the Australian Rules of Racing.

**Plea:** Guilty

**DECISION**

Mr Peter Moody, you have pleaded guilty to a breach of AR 240(2) – that is, to an offence that is usually referred to as presentation. The prohibited substance involved was Phenylbutazone, with reference also to Oxyphenbutazone. This is frequently referred to as “Bute”.

The offence occurred on 13 May 2023. The horse involved was Brereton, which competed in Race 6 over 1200 metres at Flemington on that day. Brereton finished sixth. The presence of Bute was detected in a pre-race sample.

At the outset, we thank the parties for the thorough and concise written and oral submissions that were presented. It is obvious that both Mr El-Asmar on behalf of the Stewards and Mr Jurkovsky on behalf of Mr Moody had conducted useful discussions and have narrowed the issues. Their conduct of the case was most helpful and very professional.

We accept that the cause of this positive return remains a mystery. An administration error by a staff member has been suggested as the most likely cause. Mr Jurkovsky referred to possible inadvertence or human error. However, even that is far from established as a possibility. We accept that you have a large and well-trained staff, although you have since introduced even more measures to eliminate risk.

You do have a record of one prior offence, which involved the prohibited substance, cobalt. We would refer to the decision of the Racing Appeals and Disciplinary Board of 16 March 2016. We accept that in your present set-up those earlier problems mentioned in that decision have been addressed.

We also note the references that have been placed before us. We agree that you pleaded guilty at the earliest possible opportunity and have been completely co-operative thereafter.

Both the Racing Appeals and Disciplinary Board and this Tribunal have repeatedly emphasised the importance of the perception of a level playing field and we do that again.

Public confidence in the integrity of racing is a most important contribution. It is a key reason as to why presentation, being an offence where no knowledge or wilful intent is required, carries with it the risk of a substantial financial penalty or a prohibition on participation. We do accept that you had taken many steps to eliminate such an occurrence, and have done even more recently.

The decision is always one for the Tribunal. However, when the parties have obviously engaged in substantial preliminary discussions and, whilst not having reached precisely identical positions as to penalty, are very close to so doing, we certainly take that in mind and are grateful for it.

In all the circumstances, and bearing in mind that your record is not entirely unblemished, we fix the penalty as being a fine of $5,000.

Brereton is disqualified from Race 6 at Flemington on 13 May 2023 and the finishing order is amended accordingly.

Mark Howard

Registrar, Victorian Racing Tribunal