18 October 2023

**DECISION**

**RACING VICTORIA**

**and**

**GERALD EGAN**

**Date of hearing:** 11 October 2023

**Panel:** Judge John Bowman (Chairperson) and Mr Josh Bornstein.

**Appearances:** Mr Jack Anderson appeared on behalf of the Stewards.

Mr Paul Maher represented Mr Gerald Egan.

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

(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:** 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 “Overloaded” (the Horse).

3. On 21 April 2023, the Horse was brought to the Wodonga Racecourse and was engaged to race in Race 4, the First National Bonnici and Associates Maiden Plate, over 1200 metres (the Race).

4. On 21 April 2023, prior to the Race, a urine sample (V798626) was taken from the Horse (the Sample).

5. An analysis of the Sample detected the presence of Hydrocortisone.

6. Hydrocortisone 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 Gerald Egan, you have pleaded Guilty to a breach of Australian Rule of Racing (“AR”) 240(2) and did so at a very early stage in this matter.

“Overloaded”, trained by you, ran in Race 4 at Wodonga on 21 April 2023. The horse finished seventh. A pre-race urine sample proved positive to the prohibited substance, hydrocortisone.

When interviewed by the Stewards on 9 June 2023, you were completely at a loss as to how this positive return could have occurred. Your stable staff were similarly at a loss. You checked with your veterinarian and with your own records. No explanation could be found. No relevant medication had ever been ordered from the veterinary surgeon and no such substance could be found in your stables or medicine cabinet.

You then recalled that you did have a container of a substance containing hydrocortisone, which you used for a tinea condition from which you suffered from time to time. You had used it on the relevant date. It appears likely, and we accept, that the accidental transfer of the substance from your hand to the horse had occurred in this way. It is a proposition which the Stewards do not challenge. It fits in with all the circumstances prevailing.

You have been a licensed trainer for 42 years and have an outstanding record, free from any relevant blemish. Several of our leading jockeys and apprentices have emerged from your stables. You also give freely of your time, assisting at the Mansfield racecourse and with the running of the Mansfield Agricultural and Pastoral Society. All in all, we accept that you are of exemplary character and highly regarded in the community. We repeat that we accept that the presentation of the horse with the positive return was totally accidental and occurred in the circumstances we have described.

We also accept that this whole occurrence has caused you great embarrassment and affected the conduct of your business. People do not necessarily appreciate the background to the laying of the charge and the circumstances which resulted in this accidental administration.

We have been referred to a decision of the Racing Appeals and Disciplinary Board (“RADB”), being the case of Mr Barry James, such decision being on 25 May 2011. It was also a hydrocortisone case, but there any similarity ends. It was a case involving a plea of not guilty. It was vigorously fought, with expert evidence being called. The penalty in that case was a fine of $4,000.

In all the circumstances of this case, what has been proposed by both Mr Jack Anderson, on behalf of the Stewards, and Mr Paul Maher from the Australian Trainers’ Association, on your behalf, is a fine of $4,000, but with $3,000 of that suspended for a period of 12 months. That $3,000 fine would only be activated if you committed a similar offence during that 12 month period. We are confident that you will not.

Apart from the fact that two experienced and sensible people have suggested that penalty, it is a view which we also have formed. Some penalty is necessary. There was potentially some lack of care in relation to what occurred and due to pressure of time on the day in question. However, given all the circumstances, including your very early plea of guilty, we are of the view that $3,000 of the $4,000, which might otherwise have been appropriate, should be suspended for 12 months on the terms discussed. We repeat that the penalty is a fine of $4,000, but $3,000 of that is suspended for a period of 12 months on the basis that you do not breach the relevant regulations during that time.

Further, Overloaded is disqualified from Race 4 at Wodonga on 21 April 2023 and the finishing order is amended accordingly.

Kathleen Scully

Assistant Registrar, Victorian Racing Tribunal