9 May 2024

**DECISION**

**RACING VICTORIA**

**and**

**RICHARD JOLLY**

**and**

**CHANTELLE JOLLY**

**Date of hearing:** 19 April 2024

**Date of decision:** 19 April 2024

**Panel:** The Hon. Shane Marshall AM (Deputy Chairperson) and Judge Julie Nicholson.

**Appearances:** Mr Scott Hunter appeared on behalf of the Stewards.

Mr Andrew Nicholl represented Mr Richard Jolly and Mrs Chantelle Jolly.

**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:** 1. You are, and were at all relevant times:

a. trainers in partnership licensed by Racing South Australia;

b. a visiting trainer in Victoria; and

c. bound by the Rules of Racing of Racing Victoria.

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

3. On 9 November 2023, the Horse was brought to the Flemington Racecourse and was engaged to race in Race 1, the Group 3 Darley Ottawa Stakes over 1000 metres (the Race).

4. On 9 November 2023, prior to the Race, a blood sample (V687363) was taken from the Horse (the Sample).

5. On 9 November 2023. after the Race, a urine sample (V816711) was taken from the Horse (the Sample).

6. An analysis of the Sample V687363 detected the presence of Phenylbutazone.

7. An analysis of the Sample V816711 detected the presence of Phenylbutazone, Oxyphenbutazone and Gamma hydroxyphenylbutazone.

8. Phenylbutazone and its metabolites are prohibited substances pursuant to Division 1 of Part 2 of Schedule 1 (Prohibited list B) of the Australian Rules of Racing.

**Plea:** Guilty

**DECISION**

1. Mr Richard Jolly and Mrs Chantelle Jolly train racehorses in partnership in the state of South Australia (“SA”), where they are licensed. They also, from time to time, enter horses to race and Victoria as visiting trainers. During the Melbourne Spring Carnival on 9 November 2023, they entered the filly, “Karavas”, to race in the Group 3 Darley Ottawa Stakes for two year old fillies, which was Race 1 on the program at Flemington.
2. Karavas won the race impressively. A blood sample taken from the horse prior to the race showed the presence of phenylbutazone (“bute”). A urine sample taken after the race showed the presence of bute and its metabolites.
3. Bute is a substance which is prohibited under the Rules of Racing. It is an anti-inflammatory drug and is used for pain relief, most commonly after a horse has raced and not usually within seven days of racing. It does not directly enhance performance. However, it is capable of inducing a pain free or pain reduced state in a horse. It is often prescribed by veterinarians for lameness, soft tissue injuries, muscle soreness, back and joint problems, and laminitis.
4. Karavas was stabled at Flemington in the stables of a local trainer in the week leading up to the race. Karavas received applications of some medicinal substances, but not bute. The trainer’s practice is not to administer bute within seven days of a horse racing. That practice has been endorsed by the stable veterinarian.
5. The source of the positive swab remains a mystery. One possibility is contamination due to muzzle to muzzle contact with a horse which received bute post-race at Morphettville on 4 November 2023. Another possibility, and one suggested by the stable veterinarian, was that contamination occurred at the host Flemington Stables, due to the state of the feed and water bottles at that stable. That, however, is pure speculation. A further possibility arises that bute may have been accidentally administered at the host stables.
6. Mr and Mrs Jolly have pleaded guilty to the offence at the earliest opportunity. They have excellent character. Mr Jolly has one prior offence to a prohibited substance in SA over 20 years ago. That offence occurred in unusual circumstances, where a positive swab was recorded to flunixin after a horse ate its own excrement. Mr and Mrs Jolly have cooperated fully with the Stewards and have been attempting to identify the likely source of the positive swab.
7. In setting a penalty, we take into account the above factors. We also take into account general deterrence and the importance of having a level playing field in horse racing by attempting to keep a drug free industry. We further take into account penalties in recent like cases, and, in all the circumstances, we consider that a fine of $4,000 as appropriate.
8. We have arrived at a penalty of a $4,000 fine taking into account submissions in this matter, together with the recent like matters of Mr John Leek Jnr, Mr Danny O’Brien and Mr Peter Moody. In the matter of Mr Leek, the source of the positive swab was a mystery and Mr Leek had a good record regarding prohibited substances in the previous 20 years. The same penalty was given in the case of Mr Moody, in which the source of the positive swab to bute was a mystery and that Mr Moody had a relatively good recent record regarding prohibited substances, with only one matter concerning the Tribunal in 2016, and since then, in the words of the Tribunal “earlier problems mentioned in that decision have been addressed”. In the case of Mr O’Brien, the penalty of a $5,000 fine was given for a positive swab to bute, as the circumstances were that a staff member gave the wrong horse the medication. That made the source of the positive swab less mysterious than in the current case, and justified a slightly higher penalty than that in the case of Mr Leek and Mr Moody and which is appropriate here.
9. Unfortunately, as a consequence of the transgression against Australian Rule of Racing 240(2) regarding the presentation of a horse to race whilst not free of a prohibited substance, in addition to the fine the Tribunal must also make an order that Karavas be disqualified from Race 1 at Flemington on 9 November 2023 and that the finishing order be amended accordingly.
10. We add that the Stewards submitted that a higher penalty than usual should be given due to the race being a Group 3 event. We reject that submission. The nature of the race means that a lot that larger prize money than usual is available to winner. That prize money is now forfeited. We have not taken that fact into account in ameliorating penalty. We see no reason either why it should be considered as an aggravating factor. We also reject the notion that use of prohibited substances in less noteworthy events is not as important as prohibited substances in any other race.

Kathleen Scully

Assistant Registrar, Victorian Racing Tribunal