

RACING NEW SOUTH WALES

APPEAL PANEL

20 November 2015

MR R CLUGSTON — PRINCIPAL MEMBER
MR J FLETCHER
MR K LANGBY

IN THE MATTER OF THE APPEAL OF
JARROD AUSTIN

REASONS FOR DECISION

CHAIRMAN: This is an appeal by licensed trainer Jarrod Austin (hereinafter referred to as “the Appellant”) against the severity of a penalty imposed by Stewards at the offices of Racing NSW, Druitt Street, Sydney on 15 October 2015 for breach of AR178. That Rule is in the following terms:

“Subject to AR178G, when any horse that has been brought to a racecourse for the purpose of engaging in a race and a prohibited substance is detected in any sample taken from it prior to or following its running in any race, the trainer and any other person who was in charge of such horse at any relevant time may be penalised.”

The particulars of the charge were that the Appellant did bring *Della’s Diamond* to the Canterbury Racecourse for the purpose of engaging in Race 4, the Benchmark 70 Handicap, on 19 August 2015 and prohibited substances were detected in a sample taken from *Della’s Diamond* prior to its running in that race as.

- (a) phenylbutazone and oxyphenbutazone were detected in a sample taken from *Della’s Diamond* prior to that mare running in Race 4, the Benchmark 70 Handicap, conducted at Canterbury Racecourse on 19 August 2015;

- (b) phenylbutazone is a prohibited substance pursuant to AR178B(1) as it is an agent that is capable of causing, either directly or indirectly, an action or effect or both an action and effect within the musculoskeletal system;
- (c) further, phenylbutazone is a prohibited substance pursuant to AR178B(2) as it is an analgesic and anti-inflammatory agent; and
- (d) oxyphenbutazone is a prohibited substance pursuant to AR178B(3) as it is a metabolite of phenylbutazone.

The Appellant pleaded guilty to the charge before the Stewards and the Stewards imposed a monetary penalty of \$7,000. The Appellant adhered to his plea of guilty in the proceedings before the Panel. The appeal is therefore a rehearing on the question of penalty.

The Stewards were represented in the proceedings before the Panel by Mr M. Van Gestel, Deputy Chairman of Stewards – Operations and the Appellant appeared in person unrepresented. The transcript of the Stewards' Inquiry conducted at the offices of Racing NSW on 15 October 2015 and the transcript of the hearing of the charge which took place on the same date and the exhibits tendered in those proceedings have been admitted into evidence in the proceedings before the Panel.

The essential facts of this case are not in dispute. The racehorse *Della's Diamond* was entered to compete and did run in the Benchmark 70 Handicap at Canterbury Park Racecourse on 19 August 2015. The Appellant who is a licensed trainer with Racing NSW was and had been the trainer of that horse in the period leading up to that date. At 1.40pm on that race day pre-race urine samples were taken from *Della's Diamond* in the presence of the Appellant's employee Ms Stephanie Bushell. That urine sample returned a positive reading for phenylbutazone on screening conducted by the Australian Racing Forensic Laboratory ("the ARFL"). Subsequently, in Certificate of Analysis No. ARF15/2463-B dated 24 September 2015 the ARFL certified that the urine sample taken from *Della's Diamond* on 19 August 2015 was found to contain the prohibited substances phenylbutazone and oxyphenbutazone. As a result, on 24 September 2015 the ARFL forwarded the urine sample and a control sample to Racing Analytical Services Ltd ("RAS") Flemington Victoria for confirmatory analysis. In Certificate of Analysis No. RS 15/15003 dated 8 October 2015 RAS certified that the urine sample was shown to contain phenylbutazone and oxyphenbutazone.

In his evidence before the Stewards the Appellant indicated that he took no issue with the collection, custody, transportation and analysis of the urine samples taken from *Della's Diamond* on 19 August 2015 or that phenylbutazone and oxyphenbutazone are prohibited substances under the Australian Rules of Racing.

In his report to the Chairman of Stewards of 12 October 2015 Dr C Suann, Senior Official Veterinarian with Racing NSW opined that:

“The finding of phenylbutazone and its metabolite oxyphenbutazone in a urine sample from a horse would indicate the prior administration of phenylbutazone to the horse. Phenylbutazone is a nonsteroidal anti-inflammatory agent used to treat a variety of equine musculo-skeletal disorders where pain and inflammation are present.

Phenylbutazone would be defined as a prohibited substance according to the Australian Rules of Racing since it is capable of causing an action and effect principally on the musculo-skeletal system, thereby complying with the provisions of AR178B(1). Phenylbutazone would be categorised as an analgesic and anti-inflammatory agent, thereby fulfilling the requirements of AR178B(2).

Oxyphenbutazone is an equine metabolite of phenylbutazone, therefore defining it as a prohibited substance according to the provisions of AR178B(3).

Phenylbutazone is the active ingredient in a number of veterinary Schedule 4 prescription animal remedies, either injectable solutions for intravenous injections, or granules, powders or pastes for in-feed or oral administration.”

In his evidence given to the Stewards Dr A Cawley, Science Manager for the ARFL, indicated that his estimate of the quantity of phenylbutazone in the sample tested by the ARFL was 10,000 nanograms per ml and his estimate of oxyphenbutazone was 10,000 nanograms per ml compared to the screening limits of 100 nanograms per ml. Dr Suann's oral evidence before the Stewards was that those levels indicated an administration of phenylbutazone within hours of the urine sample being taken from the horse at Canterbury racecourse.

In his report to Stewards dated 12 September 2015 Mr N Ryan, Investigator, Surveillance Investigation Unit of Racing NSW, indicated that he and other investigators attended the Appellant's Warwick Farm stables on 12 September 2015 where they located an injectable (Butasyl) and paste (Equine Bute Paste) form of phenylbutazone. Investigators also obtained treatment records which revealed that *Della's Diamond* had been administered 5ml of bute paste on 18 July, 9 August and

13 August 2015. Dr Suann's evidence was that the disclosed treatment regime was inconsistent with the concentration levels described by Dr Cawley in his evidence.

In his evidence before the Stewards the Appellant said that one of his employees must have given bute paste to *Della's Diamond* by mistake on the morning of race day. The Appellant described the system that was in place prior to raceday on 19 August 2015 as one in which he would prepare a list of horses to receive treatment, the list would then be given to his foreperson Ms Kate McMaster who would then prepare and distribute the medication to stablehands who would then administer the preparation to horses under their individual care. The Appellant informed Stewards that as a result of this case only he and Ms McMaster now administer medication to his horses.

The Panel has considered the evidence and the submissions on the question of penalty. The Panel considers that the Appellant's breach is serious in the overall framework of the Australian Rules of Racing as it impinges on the level playing field which is fundamental to the overall integrity of racing. Consequently, the Panel considers that it is necessary to impose a penalty such as would be likely to deter the Appellant from reoffending as well as other licensed trainers who may, in the future be minded to commit the same or a similar offence.

On the other hand, the Panel takes into account the Appellant's plea of guilty entered at the first available opportunity before the Stewards and his cooperation with Stewards during their investigation. The Panel has also taken into account that the Appellant has been a licensed trainer for some seven (7) years with sixteen (16) horses in work and there have been no previous "prohibited substance" breaches.

The Panel also considered the precedent table of penalties in previous cases of breaches of AR177 and/or AR178 involving the substance phenylbutazone. The Panel notes that the table refers to a number of cases covering the period 24 June 1989 to 26 January 2012 and that a wide range of penalties including fines, disqualification and suspension have been imposed. The Panel also notes that the recent trend has been towards the imposition of fines ranging from \$4,000 to \$15,000.

Ultimately, the Panel is comfortably satisfied, based on the evidence of Dr. Suann and Dr. Cawley, that phenylbutazone was administered to *Della's Diamond* on race day morning and that the administration occurred in circumstances where the substance was administered as a result of a mistake made by one of the Appellant's

employees. The Panel is also satisfied that when the horse competed on raceday it did so under the therapeutic affects of the prohibited substance. The Panel takes the view that the underlying cause of the Appellant's breach was the practices that were in place in his stable at the time for the treatment of his horses which fell well short of his obligations as a licensed trainer.

Ultimately, the Panel considers that in all of the circumstances of this case the appropriate penalty is a fine of \$7,000.

The orders of the Panel are as follows:

1. appeal dismissed;
2. penalty of \$7,000 fine imposed by Stewards is confirmed;
3. appeal deposit of \$200 is forfeited.