

RACING APPEAL PANEL OF NEW SOUTH WALES

APPEAL OF MS JOANNE HARDY

Appeal Panel: **Mr R. Beasley SC – Principal Member; Mrs S Skeggs; Mr J Fletcher**

Date of hearing: **15 February 2018**

Date of decision: **15 February 2018 (date of reasons 16 February 2018)**

Appearances **Appellant – In person**
Racing New South Wales – Mr Marc Van Gestel, Chairman of Stewards

REASONS FOR DECISION

Mr R Beasley SC (Ms S Skeggs and Mr J Fletcher agreeing)

Introduction

1. On 23 January 2018, the appellant, licensed trainer Ms Joanne Hardy, pleaded guilty to a breach of AR 178 of the Australian Rules of Racing. That plea followed a Stewards' Inquiry conducted that day, during which the Stewards brought a charge against the appellant under that Rule.

2. AR 178 is in the following terms:

Subject to AR 178G, when any horse that has been brought to the 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.

3. The particulars of the offence were that the appellant brought the racehorse D'Great Beauty to race at Coffs Harbour on 7 November 2017 for the purpose of engaging in a

race and the prohibited substances Norketamine and Dehydronorketamine were detected in a pre-race urine sample taken from the horse. The horse ran 4th in the race, and was subsequently disqualified. The appellant was penalised by way of a \$4000 fine. The prohibited substances are best described as Ketamine, a general anaesthetic.

4. On appeal to the Panel today, The Stewards were represented by Mr Marc Van Gestel, the Chairman of Stewards. The appellant represented herself.

Evidence and submissions

5. While an appeal to this Panel from a determination of the Stewards is by way of re-hearing, both parties relied on the transcript from the Stewards' Inquiry, and the exhibits from the Stewards' Inquiry were admitted and given the same exhibit number.
6. Unlike some cases involving breach of AR 178, nothing in this appeal is a mystery.
7. The following facts were established:
 - (a) The appellant is the trainer of the racehorse D'Great Win. That horse had surgery on 25 October 2017. It was administered the prohibited substance – the general anaesthetic – for the purposes of the surgery.
 - (b) At some stage after D'Great Win returned to the appellant's stables, she took it out of the box it was in, and put D'Great Beauty in that box.
 - (c) While the appellant cleaned out the box of soiled straw, she did not remove all the straw (which she described as hard to obtain from time to time in rural areas).
8. We are comfortably satisfied on the evidence, to the point of near certainty, that D'Great Beauty returned a positive result to the general anaesthetic by consuming straw that D'Great Win had contaminated.
9. We are also comfortably satisfied that the appellant did not know that this kind of environmental transfer was possible. She did not know that the prohibited substance was even given to D'Great Win. She inquired of her vet after that horse's surgery what she needed to do. She was given no warnings or advice about ketamine. There is no criticism made of her vet that she didn't. There is very limited literature available

to suggest that the appellant was running any risk by putting D'Great Beauty in the box recently used by D'Great Win: Ex 16 is a "Letter to the Editor" of a journal (dated 7 July 2014) which warned of the possibility of "environmental recirculation of Ketamine", and provided details of previous example of this occurring. We do not consider that the appellant, or any trainer, could be expected to be familiar with this letter. There would appear to be little or no other literature on the issue: see Ex B, letter of Dr D Johnson dated 7 February 2018.

10. Having said that, it is true that the appellant must take "ultimate responsibility" for her horses, including not only what is administered to them, but what they ingest into their system, even by inadvertence: see *Appeal of Mair*, RAT, QLD, 6/8/03.
11. Further, a breach of AR 178 is a serious breach of the Rules. It always puts racing in a bad light when a horse is presented to race with a prohibited substance in its system. The penalty provisions of the Rules have the object of protecting and to a degree restoring the image and integrity of racing, and serving its interests. A breach of AR 178 in most cases results in a disqualification or suspension. Special circumstances must exist for a penalty of a fine to be imposed: *Appeal of Rogerson* (24/5/98) as referred to in the *Appeal of Farley*.
12. In this case, the Stewards fined the appellant \$4000. They assessed the base penalty in the sum of \$6000, and discounted for the appellant's plea.
13. There is no doubt in our minds that a fine is appropriate here. The facts in this appeal are uncommon for a breach of AR 178. The cause of the positive sample is known. It involved no dishonesty by Ms Hardy. Further, and more unusually, the Panel is unable to identify any negligence, oversight or carelessness on her behalf. This case involves no more than misadventure or bad luck. Additionally, the prohibited substance was detected in a very low level in D'Great Beauty's urine – something close to a 'trace' amount: T 22 L1045-1052.
14. The appellant has an unblemished record. She is clearly a person of good character: see Ex B. The written submissions she provided to the Panel convinced us that she is both

remorseful that the offence occurred, and greatly disappointed she has breached the Rule in circumstances where she has been honest, and exercised reasonable care.

15. There are very few breaches of AR 178 that warrant a fine rather than a more severe penalty. This is one such case. While we do not consider the penalty imposed by the Stewards here to be excessive or punitive, it is a larger fine than we consider should be imposed. The facts in this appeal satisfy us that the minimum possible penalty should be imposed. In our view, that is a fine of \$1000.

16. We make the following orders:

- (a) Appeal against severity of penalty allowed.
- (b) Penalty of a fine in the sum of \$4000 set aside.
- (c) In lieu of that penalty, a penalty of a fine of \$1000 is imposed.
- (d) Appeal deposit to be refunded.