

RACING NEW SOUTH WALES

APPEAL PANEL

2 June 2016

MR R CLUGSTON — PRINCIPAL MEMBER
MR K LANGBY
MR C CLARE

IN THE MATTER OF THE APPEAL OF
MARK SUES

REASONS FOR DECISION

CHAIRMAN: This is an appeal by licensed trainer Mark Sues (hereinafter referred to as “the Appellant”) against the penalty imposed by Stewards at Racing NSW Offices, Drutt Street, Sydney on 30 March 2016 in respect of a breach of AR 140(a)(ii)(a). That Rule provides that:

“(a) The trainer of a horse that is included in the final acceptors for a race must:

(ii) report to the Stewards:

(a) by acceptance time, any occurrence, condition, or treatment that may affect or impact on the horse’s performance in the race where the occurrence takes place, condition is present or treatment is administered before acceptance time.”

The particulars of the charge were that the Appellant as trainer of the racehorse *Earthly Tiger* which was diagnosed by Racing NSW Veterinary Official Dr Meg Brownlow to have been lame in the near foreleg after finishing in ninth placing in the Poplar Petfood and Produce Class 2 Handicap at Kembla Grange Racecourse on 13 February 2016 did fail to report to Stewards by acceptance time of 9am Thursday 11 February 2016 a condition that may have affected and/or impacted on *Earthly Tiger’s* performance in the said race such condition being diagnosed by the Illawarra Equine

Centre after the taking of radiographs on 9 February 2016 being joint disease in the left and right knees with several osteochondral fragments otherwise known as bone chips, present in both knees.

The Appellant pleaded not guilty to the charge before the Stewards however the charge was found proved and the Stewards imposed a monetary penalty of \$2,000. The Appellant entered a plea of guilty to the charge in the proceedings before the Panel. This appeal is therefore a rehearing on the question of penalty only.

The Stewards were represented in the proceedings before the Panel by Mr C Polglase, Stipendiary Steward and the Appellant appeared in person unrepresented. The transcript of the Stewards' inquiry conducted at Kembla Grange Racecourse on 13 February 2016 and at Racing NSW Offices, Drutt Street, Sydney on 30 March 2016 and the transcript of the hearing of the charge which took place on 30 March 2016 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. They are as follows:

- the Appellant was the trainer of the racehorse *Earthly Tiger* in the period leading up to and on 13 February 2016;
- the registered owner of the horse throughout its racing career was Mr Michael Coleman;
- on 9 February 2016 radiographs were taken of *Earthly Tiger's* left and right knees by Dr M O'Brien, a veterinarian employed by the Illawarra Equine Centre. Dr Mitchell Brown, also a veterinarian employed by the Illawarra Equine Centre, was present when the radiographs were taken;
- on the same day the radiographs were sent to Randwick Equine Centre and a specialist opinion sought. Dr Chris O'Sullivan viewed the photographs and advised that *Earthly Tiger* should be retired instead of administering intra-articular medication;
- on either 9 or 10 February 2016 Dr Brown contacted the Appellant and informed him that there had been severe changes detected in the horse's knees and that he wouldn't administer intra-articular medication to the horse;
- after speaking to the Appellant Dr Brown then contacted the horse's owner, Mr Coleman, who was informed in some greater detail as to the condition of the horse's knees and was advised by Dr Brown to retire the horse;

- after speaking to Dr Brown Mr Coleman contacted the Appellant who told him that he was happy with the horse's appearance and training. Mr Coleman told the Appellant that the condition of the horse's knees had deteriorated however no final decision was made between the Appellant and Mr Coleman to retire the horse;
- the horse *Earthly Tiger* was nominated and accepted to run in the Poplar Petfood and Produce Class 2 Handicap at Kembla Grange Racecourse on 13 February 2016;
- the Appellant did not prior to acceptance time notify the Stewards of any issue in relation to the horse's knees;
- on race day the horse's jockey (P King) notified the starter that he had concerns in relation to the horse's action en route to the barriers;
- the horse was inspected at the barriers by the race day veterinarian Dr Mizzi and was passed fit to start;
- the horse finished in second last position in his race beaten 10.3 lengths;
- jockey P King was concerned about his horse's action during the race;
- the horse was inspected by the official race day veterinarian, Dr M Brownlow, within 15 minutes of racing and was found to be acutely lame in the nearside foreleg (assessed at grade 4 out of 5).

Dr Brown's clinical notes were in evidence before the Stewards (Exhibit 3). The notes in relation to 9 February 2016 were in the following terms:

"On 9/2/2016 radiographs were taken of *Earthly Tiger's* left and right knees. Photographs revealed severe degenerative joint disease of the left and right mid carpal joints with several osteochondral fragments present off the left radial and intermediate carpal bones. The left fore third carpal bone had a partial slab fracture on the lateral aspect.

The radiographs were sent to Randwick Equine Centre and a specialist opinion sought. Dr Chris O'Sullivan viewed the radiographs and advised not to administer intra-articular medication and instead retire the horse. The trainer and owner were spoken to and told Illawarra Equine Centre would not administer intra-articular medication to this horse.

An in depth conversation was held with the owner, Michael Coleman, and it was mutually decided that in the best interests of the horse that he be retired. It was

mentioned that there are people that Michael knows who may be interested in taking the horse as a pet/paddock horse. Michael Coleman then stated he would inform the trainer of his intentions to retire the horse.”

Stewards also heard expert evidence from Dr Craig Suann, Senior Official Veterinarian with Racing NSW, in relation to Dr Brown’s clinical notes. Dr Suann’s evidence was that he agreed with Dr Brown that the horse should not have received any intra-articular medication and that it was appropriate that the horse be immediately retired from racing at that point.

The questions of the horse’s veterinary prognosis and the Appellant’s knowledge of that prognosis received considerable attention at the Stewards’ inquiry. The Panel’s findings in relation to those issues are as follows:

- the picture painted by the radiographs taken of the horse’s knees on 9 February 2016 clearly required the immediate retirement of the horse;
- limited details of the horse’s condition were conveyed to the Appellant by Dr Brown during their conversation either on 9 or 10 February 2016 – the Appellant was advised by Dr Brown that the changes in the horse’s knees were severe such that Dr Brown would not administer intra-articular medication to the horse however the Appellant was not informed that the horse had sustained a partial slab fracture in his knee and he was not informed that it was Dr Brown’s opinion that the horse should be retired immediately;
- full details of the horse’s condition were conveyed to the owner, Mr Coleman, by Dr Brown in their conversation which took place after Dr Brown had spoken to the Appellant;
- in that conversation Mr Coleman agreed to accept Dr Brown’s recommendation that the horse be retired immediately;
- in the subsequent conversation between the Appellant and Mr Coleman Mr Coleman passed on the information he had received from Dr Brown in relation to the horse’s knees, but not the partial slab fracture, and raised the question of retirement with the Appellant but left that decision to the Appellant in view of his positive attitude to the horse’s performance in training and his general appearance;

- the Appellant was aware that the horse had had two previous operations on its knees and was made aware by Mr Coleman that the horse had developed bone chips in his knees and he acknowledged to the Stewards that in those circumstances he should have notified them of the horse's current veterinary condition before accepting with the horse.

The Panel has considered the evidence and the submissions in relation to the question of penalty. The Panel notes that in his closing remarks the inquiry Chairman, Mr C Polglase, indicated that AR 140 is concerned with the integrity of racing and the welfare and safety of both horse and rider. The Panel agrees with and adopts those remarks.

The Appellant was first licensed to train in New South Wales in 2012 having been a licensed trainer in Queensland for some fourteen (14) years and his Disciplinary Record discloses two (2) previous breaches of AR 140(a), one in 31 January 2013 at Wyong dealt with by reprimand and the second at Nowra on 18 October 2015 dealt with by monetary penalty of \$200. The Panel considers that the Appellant's prior record does not assist him. On the other hand, the Panel takes into account the plea of guilty entered by the Appellant before the Panel but not before the Stewards.

The Panel has also considered the precedent table of penalties in previous cases of breach of AR 140(a). The Panel notes that the table covers the period 1993 to 2016 and that the penalties imposed were either reprimands or monetary penalties. The Panel also notes that the highest penalty in the table was a \$5,000 fine in the case of licensed trainer Gai Waterhouse which involved the horse *More Joyous* in the All Aged Stakes (a Group 1 race) run at Randwick Racecourse.

Ultimately, the Panel considers that in all of the circumstances of this case the appropriate penalty is a monetary penalty of \$1,000 having regard to the range of penalties in other cases involving breaches of AR 140(a) and the fact that the Appellant was not aware of the full details of the horse's condition.

The orders of the Panel are as follows:

1. Appeal is upheld;
2. Penalty of \$2,000 monetary penalty imposed by Stewards is varied to a monetary penalty of \$1,000;
3. Appeal deposit is forfeited.