

RACING APPEALS AND DISCIPLINARY BOARD

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DECISION

RACING VICTORIA STEWARDS and

RUSSELL GREEN

Date of Hearing 3 October 2017

<u>Panel</u> Judge Bowman (Chair), Geoff Ellis, Jeremy Rosenthal.

Appearances Elizabeth Brimer of counsel, instructed by James Ogilvy, appeared

on behalf of the stewards.

Joe Ferwerda of counsel, instructed by Ryan Carlisle Thomas,

appeared on behalf of Mr Green.

<u>Charge 1</u> AR 178E(1)

'Notwithstanding the provisions of AR 178C(2), no person without the permission of the Stewards may administer or cause to be administered any medication to a horse on race day prior to such

horse running in a race.'

Charge 2 AR 175(I) (alternative to Charge 1)

'The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise: (I) Any person who attempts to commit, or conspires with any other person to commit, or any person who connives at or is a party to another committing any breach of

the Rules.'

<u>Charge 3</u> 'The Principal Racing Authority (or the Stewards exercising powers

delegated to them) may penalise: (g) Any person who gives at any interview, investigation, inquiry, hearing and/or appeal any evidence

which is false or misleading in any particular.'

Summary Mr Green was at all relevant times a trainer licensed by Racing

Victoria and the trainer of Overton Onyx.

In relation to charges 1 and 2, the stewards alleged that Mr Green administered, or attempted to administer, respectively, a solution which contained (at least) an unknown quantity of Green Amino drench, Blud powder and water via syringe to *Overton Onyx* on 6 April 2017 when it was engaged to run in Race 6 at Wangaratta that

day.

<u>Plea</u> Charge 1 - not guilty.

Charge 2 - not guilty. Charge 3 - guilty.

Decision

Charge 1

The Board does not find the charge proved. The charge is therefore dismissed.

Charge 2

The Board finds the charge proved. Mr Green convicted and his licence suspended for a period of 3 months.

Charge 3

Mr Green convicted and his licence suspended for a period of 1 month, to be served concurrently with the suspension imposed for charge 2.

The total period of suspension is 3 months. In accordance with the provisions of AR 196(6)(a), the commencement of the period of suspension is deferred for 7 clear days from today's date.

Georgie Gavin Registrar - Racing Appeals and Disciplinary Board

TRANSCRIPT OF

PROCEEDINGS

RACING APPEALS AND DISCIPLINARY BOARD

HIS HONOUR JUDGE J. BOWMAN, Chairman MR G. ELLIS MR J. ROSENTHAL

EXTRACT OF PROCEEDINGS

DECISION

RACING VICTORIA

and

RUSSELL GREEN

RACING VICTORIA CENTRE, FLEMINGTON

TUESDAY, 3 OCTOBER 2017

MS E. BRIMER appeared on behalf of the RVL Stewards

MR J. FERWERDA (instructed by Ryan Carlisle Thomas) appeared on behalf of Mr R. Green

CHAIRMAN: Mr Russell Green, you have been charged with a breach of AR 178E, in that on 6 April 2017, without permission, you administered or caused to be administered medication to a horse, Overton Onyx, on race day prior to that horse running in a race at Wangaratta. The medication in question was a solution containing inter alia an unknown quantity of Green Amino drench and Blud Hematinic powder. There is no argument that you are a licensed trainer and the trainer of Overton Onyx. You pleaded not guilty to that charge.

In the alternative, you are charged pursuant to AR 175(1), that in essence, you attempted to commit a breach of AR 178E, the circumstances being as set out above. You have also pleaded not guilty to that charge.

You have pleaded guilty to the charge of breaching AR 175(g), in that you gave false or misleading evidence to the Stewards who interviewed you at your premises on 6 April 2017 in relation to these offences. Effectively, you told them a series of lies concerning what had occurred, claiming that the substance in question in the bucket was a shampoo used for improving the appearance of Overton Onyx before it raced.

You saw the Stewards at Wangaratta racecourse a couple of hours later and admitted the first version of events was untruthful. Whilst this is a separate offence and will be dealt with separately, it does have the capacity to be relevant to the other charges which you face.

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We shall deal firstly with the alleged breach of AR 178E, the administration of a solution on race day. In our view, this charge must fail. We are a long way short, not having reached that level of comfortable satisfaction required by the test in Briginshaw v Briginshaw. We would come to the same conclusion on the balance of probabilities without any Briginshaw addition. We are simply far from satisfied that there was any persuasive evidence that the solution was administered. None of it was found in or around the horse's mouth or anywhere else on the horse. When the Stewards arrived, the bucket containing the substance was at least a modest distance from the horse and was on the ground. The horse was being hosed.

Later at Wangaratta racecourse, blood and urine samples were taken from Overton Onyx. Analysis of these samples revealed nothing out of the ordinary. It may be that these products would not show up on analysis. The bottom line is that there is no evidence that any part of the substances were in fact administered.

The drawing of an inference based in essence upon your evidence concerning the broken syringe and how much of the mixture could be found falls a long way short of discharging the burden. There is simply no evidence, direct or inferential, that persuades us that the charge has been made out and it is dismissed.

We turn now to the charge of attempting to administer the substance on race day. We are of the view that this charge has been made out. In relation to

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attempts, we refer to what was said by Lord Parker CJ in Davey v Lee (1967)

2 All ER 423, where what was said in a couple of well-known texts was set out and is as follows. Quoting firstly from Stephen's Digest of Criminal Law:

An attempt to commit a crime is an act done with intent to commit that crime and, forming part of a series of acts which would constitute its actual commission if it were not interrupted.

Lord Davey went on:

As a general statement, that seems to me to be right, although it does not help to define the point of time at which the series of acts begins. That, as Stephen said, depends on the facts of each case.

Lord Parker CJ then set out an extract from Archbold's Pleading:

It is submitted that the actus reus necessary to constitute an attempt is complete if the prisoner does an act which is a step towards the commission of the specific crime, which is immediately and not merely remotely connected with the commission of it, and the doing of which cannot reasonably be regarded as having any other purpose than the commission of the specific crime.

We would also refer to the decisions in Karakatsanis v Racing Victoria Ltd, particularly that of the Supreme Court (2013) VSC 434.

It is in relation to this charge that your telling of lies to the Stewards is particularly relevant. Of course, actions and reactions after the actual occurrence of an event are admissible in evidence. When the Stewards arrived unannounced, the bucket containing the mixture of substances and the syringe were comparatively close to Overton Onyx. The bucket and its contents were then moved by your daughter to whom you had spoken to a type of hatch in a truck some short distance away and the lid was closed. You then told Stewards a series of lies about what had been going on and what was in the bucket.

Your later explanation, when admitting the lies, was that the mixture was actually for three horses of yours that were scheduled to race at Holbrook the following Saturday. If that was the truth of the situation, why not tell the Stewards straightaway? It was a perfect answer to their queries and no question of race-day administration would arise. You say you panicked, but exactly why is far from clear. You had at your disposal a complete and simple answer to their queries and one which, if true, should have been at the forefront of your mind. You had just been preparing the mixture. Instead, you told them a collection of lies and we consider this to be a factor of some significance.

When all these factors are taken into account, we are comfortably satisfied that you were preparing, in breach of AR 178E, to administer medication on race day. The mixture had been prepared, a syringe had been obtained, the horse was out in the stall with you, and you then later told lies. We find that the charge is made out and we find you guilty of a breach of AR 175(l).

In relation to penalty, we shall deal first with the breach of AR 175(1). This is a serious offence. There has been an attempt to commit an offence which damages the issue of racing and adversely affects public confidence in the industry. Race-day administration has the potential to do just that. There is a need for general deterrence. We are not of the view that the penalty should be the same as if the offence actually took place. That does not seem to sit comfortably with established criminal law practice.

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Mr Ferwerda has asked that Mr Green be fined. We are not of a view that this is appropriate. We also appreciate that the substance in question is not a well-recognised performance enhancer or the like. However, it was an attempt at race-day administration which is understandably a serious matter and not one for a fine in this case.

We have borne in the mind the situation of your health and the various powerful references that have been presented on your behalf. Our overall view is that a period of suspension is required and you are suspended for three months.

In relation to a breach of AR 175(g), the giving of false statements is also a serious offence. You have pleaded guilty to this offence and we take that into account. We also note that you promptly admitted to some of the lies. However, this offence is also one that damages the image of racing and public confidence. In the circumstances, a penalty of suspension is required and you are suspended for a period of one month, to be served concurrently with the penalty previously mentioned. The end result is that you are suspended for a total period of three months. That period will start seven days from this date.
