



DECISION

RACING VICTORIA STEWARDS and LEN XUEREB

Date of Hearing 9 April 2018

Date of Decision 3 May 2018

Panel Judge John Bowman (Chair), Mr Chris Fox, Prof Raymond Harbridge.

Appearances Mr Stephen Schmidhofer appeared on behalf of the RV Stewards.
Mr Damian Sheales of counsel appeared on behalf of Len Xuereb.

Charge 1 AR 175(h)(i) - withdrawn by the stewards prior to the hearing.

Charge 2 AR 175(h)(ii) – (alternative to Charge 1)

- (h) *Any person who administers, or causes to be administered, to a horse any prohibited substance:*
- (i) *which is detected in any sample taken from such horse prior to or following the running of any race.*

On 9 July 2015, *Elegantly Wasted* ran in the Eastcoast Plumbtec Maiden Plate 1417 metres at the Sale racecourse. Prior to the race, Mr Xuereb administered or caused to be administered, to *Elegantly Wasted* a prohibited substance, being cobalt at a concentration in excess of 200 micrograms per litre in urine which was detected in the post-race urine sample taken from *Elegantly Wasted* following the running of the race.

Charge 3 AR 178 - (alternative to Charges 1 and 2)

AR 178 Subject to AR 178G, 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.

Subsequent to a guilty plea being entered for Charge 2, Charge 3 (which was laid in the alternative) did not proceed.

Charges 4 - 7

AR 80E

(1) Any person commits an offence if he has in his possession or on his premises any substance or preparation that has not been registered or labelled, or prescribed dispensed or obtained, in compliance with the relevant State or Commonwealth legislation.

On 4 September 2015, during the course of a stable inspection at Mr Xuereb's training premise the Racing Victoria Stewards located:

- three new 5mil bottles of SGF-5000 (substance).
- three used 10mil bottles of Bio Blood Builder (substance).
- One 100mil bottle of Enduro 500 (substance).
- One 100mil bottle of Bio Bleeder.

Mr Xuereb's possession of the substances constituted an offence contrary to AR 80E(1) as the substances were not registered or labelled, or prescribed, dispensed or obtained, in compliance with the relevant State or Commonwealth legislation.

Charge 8

AR 178F

(1) A trainer must record treatment and medication administered to each horse in his or her care by midnight on the day on which the administration was given, and each record must include the following information:

- a) the name of the horse;*
- b) the date and time of administration of the treatment or medication;*
- c) the name of the treatment or medication administered (brand name or active constituent);*
- d) the route of administration including by injection, stomach tube, paste, topical application or inhalation;*
- e) the amount of medication given (if applicable);*
- f) the duration of a treatment (if applicable);*
- g) the name and signature of person or persons administering and/or authorizing the administration of the treatment or medication.*

Contrary to the minimum requirements of AR 178F(1), Mr Xuereb failed to properly record all treatments and medications (including Bio Blood Builder) administered to *Elegantly Wasted* in the period leading up to 9 July 2015.

Plea

Charge 2 - Guilty

Charges 4 – 8 inclusive - Guilty

Decision

Charge 2 - The Board finds the charged proved.
Mr Xuereb is convicted and disqualified for a period of six months.

The Board orders that the commencement of the period of disqualification be deferred until 12.01am Friday 11 May 2018, it being the maximum period of deferral of the disqualification as permitted by the rules; see AR 196(6).

Pursuant to AR 196(6)(b) Mr Xuereb must not start a horse in any race from the date of the Board's decision, 3 May 2018, until the expiration of the period of disqualification.

Pursuant to AR 177, *Elegantly Wasted* is disqualified as winner of Race 5 the *Eastcoast Plumbtec Maiden Plate* (1417m) at Sale on 9 July 2015 and the places amended accordingly.

Charges 4 to 7 - Mr Xuereb convicted and fined \$150 per charge, total of \$600
Payment terms: 3 months

Charge 8 - Mr Xuereb convicted and fined \$400
Payment terms: 3 months

Grace Gugliandolo
Registrar - Racing Appeals and Disciplinary Board

**RACING APPEALS AND DISCIPLINARY BOARD
(Original Jurisdiction)**

Racing Victoria Stewards

v

Len Xuereb

DECISION

Judge Bowman	Chair
Mr C Fox	Member
Prof R Harbridge	Member

Mr Len Xuereb, you have pleaded “Guilty” to a number of charges.

One charge having been withdrawn by the stewards, the first is a breach of AR 175(h)(ii). In summary, the particulars are that you were the trainer of *Elegantly Wasted* which ran in the Eastcoast Plumbtec Maiden Plate at Sale on 9 July 2015. Prior to the race, you administered a prohibited substance, being Cobalt, at a concentration in excess of the prescribed limit, which was detected in the post-race urine sample taken from *Elegantly Wasted*.

The second charge, which is an alternative to the above charge, relates to AR 178. As you are pleading to the above charge, that need not detain us.

10 The third charge concerns AR 80E. As at 4 September 2015 you had at your training premises three bottles of a substance not registered, labelled, prescribed or the like in accordance with the relevant legislation, such substance being SGF-5000.

The next charge is similar to the previous one, save that the substance is Bio Blood Builder.

15 The next charge is again similar, save that it involves one bottle of Enduro 500.

There is a further such charge, this time the substance being one bottle of Bio Bleeder.

Finally, you have pleaded guilty to a breach of AR 178F to the effect that you failed to record all treatments and medications, including Bio Blood Builder, administered to *Elegantly Wasted* in the period leading up to 9 July 2015.

20 The principal charge upon which attention was focused was the breach of AR 175(h)(ii) – the administration of Cobalt. Mr Sheales, appearing on your behalf, concentrated considerable attention on whether Cobalt does in fact possess the performance-enhancing qualities which, along with some dangers to health, that have been attributed to it. Of course, as we have pointed out, the bottom line is that it is a
25 prohibited substance. Whether or not it should be is a totally different argument and one into which we should not, and will not, enter.

We understand the argument of Mr Sheales to the effect that there has been attributed to Cobalt a type of stigma that is not warranted and which should not impact upon the penalty imposed. He argues that you should receive no greater penalty than that
30 imposed upon those who have breached AR 175(h)(ii) in relation to other substances. He reminded us that your offence occurred in mid-2015, when, he effectively submitted, there was a type of media frenzy surrounding Cobalt. There were releases by the stewards. There was a type of hysteria about the use of Cobalt which, he submitted, has proven to be totally unjustified. The fact that Cobalt is the substance
35 involved in your case should have no effect upon the size of the penalty we impose, which should be in line with the penalties imposed in other administration cases where Cobalt is not the prohibited substance.

We follow the submission, but it does have the potential to be something of a double-edged sword. Certainly in 2014 and early 2015 there had been a large amount of
40 publicity about Cobalt. There had been the following:-

- i. A stewards' notice in February 2014.
- ii. A media release in April 2014.
- iii. A headlined report by Mr Terry Bailey in "Inside Racing" in May 2014.
- iv. A further report by Mr Bailey in the same publication in August 2014.
- 45 v. A notice to trainers from the Australian Racing Board in January 2015.

- vi. A further headlined report by Mr Bailey in “Inside Racing” in February 2015.
- vii. A large amount of coverage in the racing, national and local press and on media outlets.

Every trainer in Victoria, if not Australia, must have been aware of the attitude of the
50 stewards and of Racing Victoria to Cobalt and the risks associated with the
administration of it and other prohibited substances. Yet, in this climate, you opted
to inject your horse with an unregistered product from an unauthorised dealer,
resulting in a post-race swab that was positive to Cobalt.

This was not something carried out by a staff member or a vet. It was not something
55 carried out without your knowledge or by accident. Your decision, as the trainer of
Elegantly Wasted, which was due to race, and without seeking any advice from a vet,
was to inject it with an unregistered product. This was despite the publicity and
warnings we have described.

Further, it cannot be said that you were completely open and forthcoming in your
60 answers to the questions of the stewards. The contrary occurred. You gave a variety
of versions of the events.

We have taken into account your plea of guilty and the fact that your record is not
perfect. We note that you are a full-time trainer, but do not train a particularly large
team of horses. We also note that, through no fault of yours, you have had this
65 hanging over you for a period of almost three years. We accept that this and the
attendant publicity has had an adverse effect upon your income.

However, Mr Sheales has effectively conceded that there must be some interference
with your licence to train. We agree. We disagree with his suggestion that the penalty
should be in line with, for example, that imposed on Mr Simon Morrish of a little over
70 3 months’ suspension.

We think a more severe penalty is warranted because of the matters we have set out
earlier. You are disqualified for a period of six months.

In summary, the other four charges relate to the possession of unregistered substances in breach of AR 80E. On each of the four charges you are fined \$150, a total of \$600.

- 75 The remaining charge of failing to keep proper treatment records in breach of AR 178F is one that we see far too often. Breaches of this rule cause the stewards headaches and inconvenience in carrying out their duties. Adequate records must be kept. On this charge, you are fined \$400.