

RACING APPEALS AND DISCIPLINARY BOARD

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DECISION

RACING VICTORIA STEWARDS and

JENNY GOW-WHYTE

<u>Date of Hearing</u> 9 October 2019

<u>Panel</u> Judge Bowman (Chair)

<u>Appearances</u> Ms Charlotte Landy, appeared on behalf of the Stewards.

Mr Trevor Monti QC, appeared on behalf of Ms Gow-Whyte.

Charge AR 240(2)

"Subject to subrule (3), if a horse is brought to a racecourse for the purpose of participating in a race and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the trainer and any other person who was in charge of the horse at any relevant time breaches these Australian Rules."

<u>Summary</u> On 19 January 2019, *Anova Belle* was brought to Camperdown

racecourse and ran in the BET365 0-58 Handicap over 1000 meters. Prohibited substances, being Phenylbutazone and its metabolites Oxyphenbutazone and Gamma-Hydroxyphenylbutazone were detected in a urine sample taken

from Anova Belle prior to the running of the race.

<u>Plea</u> Guilty

Decision Ms Gow-Whyte convicted and fined \$650.

In accordance with AR 240(1), Anova Belle is disqualified from

the race and the finishing order amended accordingly.

Grace Gugliandolo Registrar - Racing Appeals and Disciplinary Board

TRANSCRIPT OF

PROCEEDINGS

RACING APPEALS AND DISCIPLINARY BOARD

HIS HONOUR JUDGE J. BOWMAN, Chairman

EXTRACT OF PROCEEDINGS

DECISION

RACING VICTORIA STEWARDS

- and -

JENNY GOW-WHYTE

RACING VICTORIA CENTRE, FLEMINGTON

WEDNESDAY, 9 OCTOBER 2019

MS C. LANDY appeared on behalf of the RVL Stewards

MR T.S. MONTI QC appeared on behalf of Ms J. Gow-Whyte

CHAIRMAN: Ms Jenny Gow-Whyte, you have pleaded guilty to a breach of AR 240(2) which relates to a positive return from a pre-race urine sample taken from Anova Belle which is trained by you, this being done at Camperdown racecourse on 19 January 2019. Anova Belle was engaged in race 3, which it won. The sample proved positive to phenylbutazone and its metabolites, all of which shall hereinafter be referred to as "bute".

Obviously the charge involved is a serious one. In imposing a penalty, I have borne in mind the seriousness of the matter and the need particularly for general deterrence in addition to specific deterrence, although that relates more to the need for security than to your behaviour. I accept that you did not administer bute to Anova Belle and that you were not directly responsible for the positive return. Stable security is another matter to which I shall return. However, the industry generally must appreciate that every care must be taken in relation to presenting horses on race day free from prohibited substances.

I have also taken the following matters into account: (1) firstly, Anova Belle was disqualified as the winner of the bet365 0-58 Handicap at Camperdown on 19 January 2019. The finishing order is amended accordingly. This is a substantial penalty in itself. You are effectively the owner of Anova Belle, apart from a very small percentage, and the sum of \$12,100 as I understand it will have to be refunded. I accept that you are a person of very limited means and in receipt of a pension.

.Gow-Whyte 9/10/19

- (2) You have pleaded guilty effectively from the outset. I accept that whilst you did not administer the bute or authorise anyone to administer it on your behalf, you have been shattered by what has occurred and have been completely genuine in relation to your remorse and embarrassment.
- (3) You have been in the industry effectively since your teenage years. You are now aged 71, so I am talking about a period of 50 years or more. You have an excellent record over that time with no prior convictions for anything of the present nature. Essentially the overwhelmingly bulk of offences have been minor administrative matters, attracting small or modest fines. In other words, you have an enviable record.
- (4) Impressive character references have been put before me. You are described as being of exemplary moral character, training and racing your horses with the utmost integrity. You have a drug-free approach, putting your love of horses before the sport without compromise. You are also described as an incredibly courageous woman who has devoted your life to your horses. I accept that these are accurate descriptions.
- (5) I am of the view that some penalty should be imposed. The reason for this, apart from general deterrence, is that responsibility for the presentation of your horses in a drug-free condition rests with you. Perhaps you were too trusting, in the sense that you have no security cameras. Essentially you run your training operation on your own and you prefer to leave your horses in paddocks. I do not criticise you for leaving your horses in a paddock but as a

result, there were many occasions, including in the period more immediately before 19 January last, when the horses were left on their own without security or supervision. This included Anova Belle before the Camperdown meeting. You have since altered your approach in relation to supervision, but whatever may have caused the positive reading, the damage has been done. I might add that your approach to recording treatment and the like has been meticulous.

(6) I accept that you do have another trainer who was hostile to you following a falling-out which occurred not long before 19 January. However, as you yourself said, it is speculation as to the role that may have been played by that person. I cannot be comfortably satisfied that such person was directly responsible for the wilful administration of the prohibited substance to Anova Belle. Even if it did occur at a time when you were not present, the question of stable security would again arise. Thus, how the bute got into Anova Belle remains a mystery.

As stated, I accept that you did not deliberately administer the substance by way of treatment for an injury or otherwise. It is not a question of mistaking the withholding period or the like. This is a different situation from that which arose in the recent case of Ms Hanna Powell which was mentioned. She is of a similar age, also having an impeccable record. However, the accidental source of administration was known and could be described as freakishly bad luck and that was accepted by the Stewards. No question of stable security arose.

.Gow-Whyte 9/10/19

I have weighed up these matters, including your financial situation, the need to refund \$12,100, your excellent record, the manner of your presentation before me, including the giving of evidence and the like. I have also taken into account that you have flown here from Mount Gambier. You have gone to the trouble of not just having legal representation but representation by a QC. That is also a clear indication of the seriousness with which you have treated the situation.

All in all, I am of the view that a comparatively modest financial penalty is required. I fix that penalty at \$650. I repeat that you are a most impressive person and of very modest means. I also repeat that the placings will be amended and the sum of \$12,100 will have to be refunded.

.Gow-Whyte 9/10/19