



DECISION

RACING VICTORIA STEWARDS and BELINDA DUNN

<u>Date of Hearing</u>	6 February 2019
<u>Date of Decision</u>	13 February 2019
<u>Date of Penalty</u>	27 February 2019
<u>Panel</u>	Judge Bowman (Chair), Mr J Bornstein (Deputy Chair), Mr J Rosenthal (Member).
<u>Appearances</u>	<p>Mr J Hooper of counsel, instructed by Ms S Foletti, appeared on behalf of the stewards.</p> <p>Mr J Ferwerda of counsel, instructed by Mr R Inglis appeared on behalf of Ms B Dunn.</p>
<u>Charge 1</u>	<p>AR 175(h)(ii)</p> <p><i>The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:</i></p> <p><i>(h) Any person who administers, or causes to be administered, to a horse any prohibited substance:</i></p> <p><i>(ii) which is detected in any sample taken from such horse prior to or following the running of any race.</i></p>
<u>Summary</u>	<p>The Stewards allege that, prior to the race on 23 September 2017, Ms Dunn administered, or caused to be administered, to <i>Margot's Boy</i> a prohibited substance, being cobalt at a concentration in excess of 100 micrograms per litre in urine, which was detected in a sample taken from <i>Margot's Boy</i> following the running of the race.</p>
<u>Charge 2</u>	<p>AR 178 (alternative to Charge 1)</p> <p><i>Subject to AR 778G, 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.</i></p>

Summary

The Stewards allege that on 23 September 2017, Ms Dunn brought *Margot's Boy* to the Tatura Racecourse for the purpose of engaging in the Mark Goring BM58 Handicap over 1980 metres when a prohibited substance, being cobalt at a mass concentration in excess of 100 micrograms per litre in urine, was detected in a urine sample taken from *Margot's Boy* following the running of the race.

Plea

Charge 1 - Not Guilty

Charge 2 - Guilty (alternative to Charge 1)

Decision

Charge 1 - Ms Dunn found guilty and suspended for a period of six months.

Charge 2 - As an alternative to Charge 1, falls away.

In accordance with AR 177, *Margot's Boy* is disqualified as the winner of Race 6 at Tatura on 23 September 2017 and the places amended accordingly.

Grace Gugliandolo
Registrar - Racing Appeals and Disciplinary Board

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

Racing Victoria Stewards

v

Ms Belinda Dunn

DECISION

Judge Bowman	Chair
Mr J Bornstein	Deputy Chair
Mr J Rosenthal	Member

Ms Belinda Dunn, you have pleaded “not guilty” to a breach of AR 175(h)(ii). It is alleged by the Stewards that you administered, or caused to be administered, to a horse a prohibited substance which was detected in a sample taken from such horse prior to or following the running of a race.

- 5 The horse in question is *Margot’s Boy*, trained by you. The prohibited substance was cobalt at a concentration in excess of 100 micrograms per litre detected in a post-race urine sample. In fact, the concentration exceeded 200 micrograms per litre. The race was the Mark Goring BM58 Handicap over 1980 metres at Tatura on 23 September 2017.
- 10 You are also charged in the alternative with a breach of AR 178, namely the bringing of a racehorse to a racecourse for the purpose of engaging in a race and a prohibited substance was detected in a sample taken from it. The factual basis involved is identical. You have pleaded “guilty” to this charge, which is one of strict liability, and which is, as stated, an alternative to the charge pursuant to AR 175(h)(ii), and
- 15 depends upon the outcome of it.

A charge under AR 175(h)(i) was withdrawn.

Turning to the charge pursuant to AR 175(h)(ii), in essence you have no explanation for the elevated cobalt reading. The stables are run by you and your husband. He has had connections with harness racing, but is also, a registered stablehand pursuant to the Rules of Racing. The operation is run by the two of you at stables in Undera, which is a small town north-west of Shepparton.

There are no other relevant employees, either full or part time. You and your husband also operate a farm at the premises, but all racing work is performed by just the two of you.

It is against this background that the charge arises. The test to be applied as to whether the charge has been proven is that in *Briginshaw v Briginshaw* – the test of comfortable satisfaction.

In the present case, we are comfortably satisfied that the charge has been proven and that you are guilty of a breach of AR 175(ii).

We have come to that result for the following reasons.

There is no suggestion of any other person being involved, other than you and your husband. There is no suggestion of any break in, trespasser, or untoward or unusual activity at your stables. It is not even suggested that there has been a relevant recent visit from a vet. Similarly, there is no suggestion of any untoward occurrence or interference with *Margot's Boy* either when transporting the horse to Tatura racecourse or at the course. Only you and your husband are involved and it is not alleged or even suggested that any other person was so involved.

Your record keeping as to administration of substances is not particularly good and somewhat confusing. Of course, we take into account that unfortunately you suffer from dyslexia. However, the fact remains that there has been some confusion as to what medications were administered to *Margot's Boy* leading into the race on 23 September 2017 and as to stable practices.

When initially interviewed by the Stewards on 13 October 2017, you stated that your husband was not allowed to touch your horses by way of treatment such as

45 injections. You also said that you did give the horses some VAM and Tripart, with a
syringe; that *Margot's Boy* would not have got VAM paste on raceday; and that
Margot's Boy is not injected with VAM. You also stated that *Margot's Boy* receives
Micspeed twice daily. Later you said that he did receive a double dose of VAM
possibly on the Thursday morning (two days before the race) and earlier in the
50 week. You were not altogether clear concerning this. You said that during the week
before the race *Margot's Boy* had received VAM in paste form. You were really quite
uncertain as to precisely what treatments had been received by the horse. Finally, in
a discussion which also involved your husband, you said "the problem is I think
we've doubled up on him".

55 Your husband, when interviewed on the same day, stated that he had been recently
made aware of a possible link between VAM and elevated cobalt readings. He
stated that your horses do get the injectable form of VAM "three days out" - 20 mills
of VAM, of B-vitamin, and of vitamin C are injected. The cobalt threshold had never
concerned him and he didn't ask about it. Your husband said he draws up the
60 syringe for the injections three days before race day under instructions from you and
administers it. VAM paste is not used.

You and your husband were interviewed jointly on 25 January 2018. You admitted
that what you told the Stewards on 13 October 2017, to the effect that your husband
did not do IV needles and that he was not allowed to touch your horses, was
65 incorrect. He does do them. You had also been incorrect as to the substances the
horses received, when, and, in relation to VAM, in what form. There was also
considerable confusion as to what was contained in a spreadsheet relating to
administration which had been prepared, as compared with your original evidence.
However, you and your husband have continued to deny that there was any race
70 day treatment or ongoing regime that would lead to a build-up of cobalt.

The whole situation is not helped by the somewhat complicated and confusing
method of running a treatment diary which you employed and we realise that your
dyslexia could well have contributed to this.

75 The bottom line is that you have no explanation as to how a cobalt reading of this
magnitude could have been reached. Quite different accounts of who did what and
how have been given. There has been reference to “doubling up”, even if this would
still not get to the level discovered. The manner in which treatment, including
injections, has been carried out is, to put it mildly, contradictory and confusing. The
recording of treatment has been inadequate. Your oral evidence has not clarified
80 matters.

In some ways this is a case similar to that of Mr Peter Moody. Your method of
running your stables has been found wanting and there is no suggestion of outside
interference. No plausible explanation as to how such a reading occurred has been
advanced.

85 The unchallenged scientific evidence before the Board in this matter is that the
recorded concentration of cobalt in excess of 200 micrograms per litre was
overwhelmingly unlikely to have been caused by any version of the feed and
treatment regime you or your husband have proffered.

We are satisfied that you administered or caused to be administered cobalt to
90 *Margot's Boy*, even if this resulted from negligence and a lack of care, particularly in
relation to medications and the like.

We find the charge pursuant to AR 175(h)(ii) proven. The alternative charge
pursuant to AR 178 falls away.

We await written submissions as the penalty from the parties.

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

Racing Victoria Stewards

v

Belinda Dunn

DECISION AS TO PENALTY

Judge Bowman	Chair
Mr J Bornstein	Deputy Chair
Mr J Rosenthal	Member

Appearances

Mr J Hooper of counsel Instructed by Ms S Foletti, appeared on behalf of the Stewards

Mr J Ferwerda of counsel Instructed by Mr R Inglis appeared on behalf of Ms B Dunn

Ms Belinda Dunn, you have been found “Guilty” of a breach of AR 175(h)(ii). You have been found to have administered, or caused to be administered, to the horse *Margot’s Boy* cobalt in excess of 100 micrograms per litre. A concentration in excess of
5 200 micrograms per litre was in fact detected in post-race urine sample taken at Tatura racecourse on 23 September 2017.

You pleaded “Not Guilty” to this charge. A charge pursuant to AR 175(h)(i) was withdrawn and the alternative charge pursuant to AR 178 has fallen away.

Effectively you have no explanation for the high cobalt reading in *Margot’s Boy*. As
10 we stated in our Decision of 13 February last, there is no suggestion of any person other than you or your husband treating the horse, of there being an intruder or the like, or of there being any relevant veterinary treatment.

What we were satisfied about was that the manner in which treatment of *Margot’s Boy* was administered was negligent. It lacked care, particularly in relation to

15 medications. The way in which you kept a treatment diary was very unsatisfactory. Generally, we would refer to our decision of 13 February.

Very helpful written submissions on penalty have been received from Mr Joe Ferwerda of counsel on your behalf and Mr Justin Hooper of counsel on behalf of the Stewards. Mr Ferwerda has argued that the most appropriate penalty is a period of
20 suspension for 6 months. Mr Hooper has submitted that a minimum of 6 months disqualification is required.

We are of the view that the appropriate penalty is 6 months suspension. We are of the opinion that suspension, rather than disqualification, is warranted.

Mr Hooper referred us to the Decisions of this Board in the cases of Mr Len Xuereb
25 and Mr Terry and Ms Katrina O’Sullivan. We think that there are significant differences between those cases and yours.

Mr Xuereb injected a horse with an unregistered product supplied by an unauthorised dealer and without obtaining any advice from a vet. Further, his previous record was “not perfect”. He was disqualified for 6 months.

30 The O’Sullivans were jointly and severally liable pursuant to LR 35F(8). Their offending involved three high cobalt readings obtained over a nine month period. Each reading was a long way over the threshold. Ms O’Sullivan refused to allow the Stewards to look inside her refrigerator. Further, the O’Sullivans claimed that they purchased products from a travelling salesman and were uncertain as to what was in
35 them. They were each disqualified for 13 months.

Your record is excellent. There is only the one horse and one charge involved. Your case is very different to those just mentioned.

Mr Peter Moody was suspended for 12 months, with 6 months of that period further suspended – an effective suspension period of 6 months. His stable was a large one
40 and the Board found that there was a high level of carelessness. There are some similarities to your situation, but also obvious differences.

We also take into account that you have only a small number of horses and a small operation run in conjunction with a fully functioning farm. The impact of a disqualification could be very considerable. We also have regard to the impressive character references which have been put before us.

When all of the above is taken into account, we have concluded that the appropriate penalty is one of suspension for a period of 6 months. We leave it to you and the Stewards to fix a commencing date.

Margot's Boy is disqualified from the race and the finishing order amended accordingly if required.