

RACING APPEALS AND DISCIPLINARY BOARD

DECISION RACING VICTORIA STEWARDS and

NATHAN McPHERSON

Date of Hearing 22 August 2018

acino

<u>Panel</u> Judge John Bowman (Chair) Geoff Ellis Prof Raymond Harbridge

<u>Appearances</u> Daniel Bolkunowicz appeared on behalf of the Stewards.

Paul O'Sullivan appeared on behalf of Nathan McPherson.

Charge 1 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.

- <u>Summary</u> The Stewards allege that on 1 October 2017, *Hunting Hill* was brought to the Caulfield racecourse and ran in the Mypunter.com BM78 Handicap over 1400 metres. A prohibited substance, being Benzoylecgonine (a metabolite of cocaine), was detected in a pre-race urine sample taken from *Hunting Hill*.
- <u>Plea</u> Charge 1 Guilty.

<u>Penalty</u> Charge 1 – Mr McPherson is convicted and suspended for two months, commencing 12.01am Thursday 23 August 2018.

Pursuant to AR 177, *Hunting Hill* is disqualified from Race 1 at Caulfield on 1 October 2017 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 MR G. ELLIS PROF R. HARBRIDGE

EXTRACT OF PROCEEDINGS

DECISION

RACING VICTORIA STEWARDS

and

NATHAN McPHERSON

RACING VICTORIA CENTRE, FLEMINGTON

WEDNESDAY, 22 AUGUST 2018

MR D. BOLKUNOWICZ appeared on behalf of the RVL Stewards

MR P. O'SULLIVAN appeared on behalf of Mr N. McPherson

CHAIRMAN: Mr Nathan McPherson, you have pleaded guilty to a breach of AR 178. The particulars of the charge are that you are a licensed trainer and on 1 October 2018 you brought to Caulfield racecourse the horse Hunting Hill which ran in the Mypunter.com Handicap. A pre-race urine sample, when tested, proved positive to benzoylecgonine, a prohibited substance and which for the purposes of this judgment we shall refer to as "cocaine".

Subsequently, some two months later, you were also tested and your urine showed small traces of cocaine. When interviewed, you denied using cocaine since approximately March or April 2017, but your denial was perhaps weakened a little by your statement that six months previously was the last time you "had a good go on it". As pointed out by Mr O'Sullivan on your behalf, three other people who may have been in contact with the horse at the relevant time were not tested.

In relation to your plea and the prevailing circumstances, we have taken into account the following: we treat your plea of guilty as having been made at an early stage and it is appropriate that you receive some discount for this. We cannot treat you as having a spotless record. In 2013 you were found guilty of administering or causing to be administered an unknown medication on race day and you were fined \$8000. We bear that in mind.

Next, given that record, we see some need for specific deterrence and a considerable need for general deterrence. Cocaine is a prohibited substance and a somewhat notorious one in the general community. Conduct or

carelessness which can lead to a horse returning a positive swab to cocaine has the potential to be very damaging for the image of racing.

Next, we note and accept that it is not submitted by the Stewards that there was any deliberate administration. Rather, this is a case of failing to take sufficient care and failing to observe best practices. We also accept that this was the only horse you had in work at the time and that you are keen to build up a string of horses. You currently have six in work, whilst also supplementing your income by working as a roof tiler. However, training is your love and you wish to expand your string and be a full-time trainer.

Past decisions of this board and from other codes and jurisdictions have been put before us. The cases of Waller, Neale and Laurie have some similarities, in that there was no deliberate administration, but have the important difference that it was not even suggested that any of those trainers used cocaine. There are other cases where administration by the trainer was found proven and that is not the situation here.

Mr O'Sullivan argued that your case is closer to those of Waller, Neale and Laurie but slightly above them in terms of appropriate penalty. He argued primarily for a fine or, if not, a brief period of suspension. The Stewards argue for a period of suspension of six months.

We are of the view that given the circumstances, including your previous offence, a penalty greater than a fine is warranted. We believe a period of

suspension is appropriate. However, we repeat that there is no suggestion of wilful administration. We have borne in mind all of the above circumstances, including your age and your determination to succeed as a trainer. Hopefully you will succeed and that you have learnt about the importance and care needed in relation to drug-free presentation on race days. Weighing everything up, we think a period of two months' suspension is appropriate.
