

HEARING RESULT

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FROM: Registrar – Racing Appeals and Disciplinary Board

DATE: 12 January 2012

SUBJECT: **HEARING RESULT – TRAINER: MARK RILEY**

Panel Judge Russell Lewis (Chair), Mr Brian Forrest (Deputy Chair),
Mr Chris Enright.

Appearances Mr Patrick Wheelahan appeared as Counsel for Mr Riley.
Racing Victoria's James Ogilvy appeared on behalf of the Stewards.

Charge Breach of AR 178

The particulars being that a prohibited substance, being alkalinising agents as evidenced by total carbon dioxide (TCO₂) at a concentration in excess of 36.0 millimoles per litre in plasma, was detected in a blood sample taken from the horse *Diablo Rosso* prior to its running in Race 7 the *My Jet Aviation 0-62 Handicap* (2400m) at Bendigo on Thursday, 4 August 2011.

Plea Guilty

Decision The Board finds the charge proved.

Mr Riley convicted but with no penalty imposed. The decision in relation to penalty was a majority decision with Mr Forrest dissenting.

Pursuant to AR 177 *Diablo Rosso* disqualified as twelfth placegetter in Race 7 the *My Jet Aviation 0-62 Handicap* at Bendigo on Thursday, 4 August 2011 and the places amended as follows:

12th - Starlet O'Hara

**TRANSCRIPT OF
PROCEEDINGS**

RACING APPEALS AND DISCIPLINARY BOARD

**HIS HONOUR JUDGE R.P.L. LEWIS, Chairman
MR B. FORREST, Deputy Chairman
MR C. ENRIGHT**

DECISION

EXTRACT OF PROCEEDINGS

TRAINER: MARK RILEY

MELBOURNE

THURSDAY, 12 JANUARY 2012

MR J. OGILVY appeared on behalf of the RVL Stewards

MR P.J. WHEELAHAN appeared on behalf of Mr M. Riley

CHAIRMAN: I shall now deliver the majority decision in relation to this plea. In relation to Charge 1, the administration charge, the majority dismissed that charge because, in effect, it was not satisfied to the Briginshaw standard that Mr Riley's explanation should be rejected.

In relation to Charge 2, the Stewards accept that they carried the onus of satisfying the Board that Mr Riley's explanation should be rejected. The standard, however, is not the Briginshaw standard. The standard is on the balance of probabilities.

It may be a nice point to argue this difference in a curial setting as well as the consequences which may flow from a particular finding. In this case, however, the majority is left in the position where it is unable to say whether the explanation should be accepted or rejected.

Having regard to the fact that Mr Riley has pleaded guilty and having regard to the fact that his record, although far from perfect, does not reveal any relevant recent conviction, the majority is of the view that it would not be appropriate to penalise Mr Riley other than recording a conviction. I now ask Mr Forrest to deliver his decision.

MR FORREST: Mr Riley has pleaded guilty to Charge 2, that of bringing Diablo Rosso to the Bendigo races on 4 August 2011 when a pre-race blood sample revealed a prohibited substance in breach of Rule AR 178. As my reasons indicated, any penalty I would have initially considered would have

related to the more serious charge, Charge 1. Although I did not accept Mr Riley's explanation for the TCO₂ reading, it would be wrong to view my decision on penalty for Charge 2 as being, in effect, a penalty for Charge 1.

As the evidence unfolded in this case, it was apparent that Mr Riley was aware that bicarbonate levels in Diablo Rosso were approaching the TCO₂ threshold, accustomed as he was to drench his horses and have blood samples analysed leading up to racing. In these circumstances, it is not unreasonable to expect a prudent trainer to be cautious.

Mr Riley's evidence to the hearing that he gave the Gribbles results little regard suggests a somewhat ambivalent approach to his obligations as a licensed trainer in relation to prohibited substances.

A consequence of a breach of Rule 178 is the disqualification of the horse from the race in question; another is the unfairness to other competitors and to the betting public, although here the horse was unplaced, when a horse containing a prohibited substance is competing.

In all the circumstances and having heard and considered what has been submitted on behalf of Mr Riley by Mr Wheelahan and by Mr Ogilvy on behalf of the Stewards, and taking into account the recorded level of TCO₂ concentration, the guilty plea and Mr Riley's personal circumstances, I would for Charge 2 suspend his licence for a period of six weeks.
