

HEARING RESULT

Distribution: Chief Executive
Group Integrity Services, Group Racing
Group Racing Development
Credit Controller
ARB, ATA, VJA, TVN
Office of Racing
T Moxon – National Drug Register
Racing Press

FROM: Registrar – Racing Appeals and Disciplinary Board

DATE: 20 July 2015

SUBJECT: **HEARING RESULT – TRAINER: RICKY MAUND**

Panel Judge Russell Lewis (Chair), Mr Brian Forrest (Deputy), Mr Darren McGee.

Appearances Mr Damian Sheales appeared as Counsel for Mr Maund.
Dr Cliff Pannam QC, instructed by Mr James Ogilvy appeared as Counsel for the stewards.

Charge 1 Breach of AR 178E(1)

Notwithstanding the provisions of AR 178C(2), no person without the permission of the Stewards may administer or cause to be administered any medication to a horse on race day prior to such horse running in a race.

Charge 2 Breach of AR 178AA

- (1) *A person must not administer an alkalinising agent, in any manner, to a horse which is engaged to run in any race, official trial or jump-out:*
- (a) *At any time on the day of the scheduled race, official trial or jump-out and prior to the start of such event; and*
 - (b) *At any time during the one Clear Day prior to 12.01 am on the day of the scheduled race, official trial, or jump-out.*
- (2) *Any person who:*
- (a) *Administers an alkalinising agent;*
 - (b) *Attempts to administer an alkalinising agent;*
 - (c) *Causes an alkalinising agent to be administered; and/or*
 - (d) *Is a party to the administration of, or an attempt to administer, an alkalinising agent,*
- contrary to AR178AA(1) commits an offence and may be penalised.*

Plea Charge 1 – not guilty.
Charge 2 – not guilty.

Decision

Charge 1 – the Board finds the charge proved.

Pursuant to AR 196(5) Mr Maund is disqualified for a period of 6 months. The period of disqualification will commence at midnight on Monday, 27 July 2015.

Pursuant to AR 196(6)(b) Mr Maund must not start a horse in any race from the date of the Board's decision, 20 July 2015, until the expiration of the period of disqualification.

Charge 2 – the Board finds the charge proved with no penalty imposed.

Georgie Gavin
Registrar - Racing Appeals and Disciplinary Board

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

*RVL Stewards v Ricky Maund
Reasons for Decision*

Judge R Lewis	Chair
Mr B Forrest	Deputy
Mr D McGee	Member

Licensed trainer Mr Ricky Maund has pleaded not guilty to one charge laid under AR 178E(1) and to one charge laid under AR 178AA.

The first charge is in the following terms:

Notwithstanding the provisions of AR 178C(2), no person without the permission of the Stewards may administer or cause to be administered any medication to a horse on race day prior to such horse running in a race.

The second charge, insofar as it is relevant, is in the following terms:

- (1) *A person must not administer an alkalinising agent, in any manner, to a horse which is engaged to run in any race, official trial or jump-out:*
 - (a) *at any time on the day of the scheduled race, official trial or jump out and prior to the start of such event; and*
 - (b) *at any time during the one Clear Day prior to 12. 01 am on the day of the scheduled race, official trial, or jump out.*
- (2) *Any person who:*
 - (a) *administers an alkalinising agent;*
 - (b) *attempts to administer an alkalinising agent;*
 - (c) *causes an alkalinising agent to be administered; and/or*
 - (d) *is a party to the administration of, or an attempt to administer, an alkalinising agent,*
contrary to AR 178AA(1) commits an offence and may be penalised.

In this case Dr C Pannam, one of Her Majesty's Counsel, appears on behalf of the stewards and Mr D Sheales of Counsel appears on behalf of Ricky Maund.

The onus of proving each charge is borne by the stewards. The charges are serious and if proved have serious consequences.

Accordingly the standard of proof is the *Briginshaw*¹ standard.

In relation to that standard the Board adopts, what His Honour Mr Justice Osborne said in the Court of Appeal in the case of *Karakatsanis v Racing Victoria Ltd*² where he approved of what was said in the case of *Greyhound Racing Authority v Bragg*³ as to the applicability of the *Briginshaw* concepts to the functions of a Tribunal such as the RAD Board.

The Stewards' Case

The stewards allege that on race morning either Ricky Maund or Luke Bryers, acting on Maund's instructions, orally administered an alkalising agent to the horse *Uncle Keithy*.

The Defence Case

Maund denies that there was any race morning medication given to *Uncle Keithy*.

Evidence

On race morning, Saturday 18 April 2015, stewards Scarlett and Melville attended Maund's stables.

Uncle Keithy, a grey horse, was wearing a head collar and was in his box. Melville noticed the residue of a white substance around the horse's lips and also on his nose.

This evidence was not challenged.

On arrival, Melville observed track rider and casual employee of Maund's, Bryers, emerging from a box which housed the horse *Kunzite*. He was carrying a plastic food container which had in it an amount of what has been described as a white slurry. He also had with him a 60ml syringe which had a white substance in it. Maund has admitted that the white slurry was in fact a mixture containing potassium chloride and bicarbonate (an alkalising agent.)

Bryers then placed the container and syringe in a bin on top of some empty feed bags where there was another used syringe which the stewards said was moist, consistent with recent use.

Melville being well aware of the prohibition regarding race day administration of medication, said to Bryers "I hope that's not one of your runners today." According to Melville, Bryers responded "yes it is." Bryers volunteered that the substance was glucose. Melville asked him "how do you know it's glucose?" Bryers replied "It's just fucking glucose."

By this time Ms Jay Siggs, a registered stablehand, who had arrived at the stables about the same time as the stewards said that horse is not running today. A scan of the horse confirmed it was the horse *Kunzite*, a non runner that day.

¹ see *Briginshaw v Briginshaw* (1938) CLR 336 at 362.

² [2013] VSCA 305.

³ [2003] NSWCA 388.

Next to *Kunzite's* box was a box which housed the horse *General Truce*. *Uncle Keithy's* box was directly opposite *General Truce*. Both horses were engaged to run at Caulfield, *Uncle Keithy* at 3.25pm and *General Truce* at 4.45pm.

Later that day at Caulfield racecourse the stewards held an inquiry. Bryers was asked whether he had given a slurry to *Uncle Keithy*, he replied "No Sir. Didn't touch it."

Maund, who was present at the inquiry, when shown a photograph of *Uncle Keithy* (see Tab 3, p 62) taken by Melville, said that the appearance of the white residue was "a mystery to me."

Dr Ledger, an RVL veterinarian who was present at the inquiry, when shown the photograph said that it was consistent with a horse receiving an oral paste or slurry. In forming her view, she not only relied upon the photographic evidence per se but also the evidence of the container and its contents and the presence of a used syringe.

At the stewards' inquiry on 1 May 2015 in response to questions put by the Chair Mr Bailey, see Tab 2 p 64-67, Maund offered alternative explanations for the presence of white residue on *Uncle Keithy*.

First he proffered bird droppings – which the Board regards as fanciful. Secondly, contamination by nasal discharge from the horse known as *Turbo* in the adjoining box – the Board also regards this as fanciful having regard to the fact that *Turbo* had raced on the previous evening and had run third.

Dr Ledger's evidence was that looking at the photograph of the horse's head the two marks on the horse's nose were likely to have been caused by a human hand and she thought it unlikely that snot or discharge would account for the presence of the substance.

Considerations

In the Board's view the questions which fall for determination are as follows.

1. How did the substance come to be on the face of *Uncle Keithy*?

In considering this question the Board rejects the suggestion that the substance was bird droppings.

The Board also rejects the suggestion that the source of the substance was nasal or oral discharge from a horse in an adjoining box.

In the Board's opinion the substance on the horse's face was attributable to human agency.

In that context the Board rejects any suggestion that any person other than Bryers or Maund was responsible. There was no evidence of sabotage or third party involvement.

2. What was the substance which was found on the horse's face?

In the Board's view there are only two possibilities as to what the substance was, either the slurry or Sulprim.

The answer to this question requires a consideration of Maund's evidence both before the stewards and at the hearing. That evidence having been considered, the Board has considerable reservations as

to his credibility. The Board notes for example his lie in telling Bryers that the substance was glucose and his evidence that he supplied two syringes for administration to one horse.

In consequence, Maund's explanation in relation to the substance on the horse which was given to the Board requires close scrutiny.

At the RAD Board hearing on 15 July 2015, Maund said for the first time that the likely explanation for the white residue was the result of an administration of Sulprim to *Uncle Keithy* on Friday, 17 April 2015. He went on to say that it was not until he recovered his treatment book from the stewards after the inquiry on 1 May 2015 that he came to the realisation that Sulprim was the culprit.

Maund was adamant that for five consecutive days ceasing on 17 April 2015, *Uncle Keithy* received Sulprim by oral administration. Yet the treatment book shows that there was only an administration of Sulprim to *Uncle Keithy* on Monday 14 April 2015.

There was no other entry relating to Sulprim between 15 April and 17 April 2015. When this was drawn to Maund's attention he strenuously maintained his position that Sulprim had been administered daily and that he was quite clear in his mind that this was the substance.

It seems to the Board to strain credulity that at the stewards' inquiry on 1 May 2015, a little less than a fortnight after race day 18 April 2015, at a time when Maund's mind was focussed on the issue of what the substance was, that Maund would not have revealed to the stewards that Sulprim was the cause of the white residue on *Uncle Keithy*.

Moreover the Board accepts the opinion of Dr Ledger that on the assumption that Sulprim was administered on Friday 17 April 2015 the ingestion of food and water would have removed any trace of Sulprim residue at least from the lips of the horse.

In the opinion of the Board Maund's Sulprim explanation represented a desperate attempt on his part to avoid culpability.

Accordingly the Board is comfortably satisfied that it should reject Maund's explanations.

As Bryers was not called to give oral evidence, the Board in making an assessment of the value of his evidence has considered his responses when questioned by the stewards on 18 April 2015 and on 1 May 2015.

Many of his responses were so inconsistent that the Board places little weight on his evidence.

Conclusion

In summary, the Board is comfortably satisfied of the following.

That on the morning of 18 April 2015 the horse *Uncle Keithy* was administered an alkalinising agent orally by syringe and that the administration was performed by Maund or by Bryers under instruction from Maund.

Accordingly the Board is comfortably satisfied that Charges 1 and 2 have been proved.