RACING APPEALS AND DISCIPLINARY BOARD

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DECISION

RACING VICTORIA STEWARDS
and
SYMON WILDE

Date of Hearing: 27 April 2017

Panel: Judge Bowman (Chair).

Appearances: Ms Simonette Foletti appeared as counsel for the stewards.

Mr Gavin Coldwell of Counsel, instructed by Mr Ross Inglis of Ryan Carlisle Thomas, appeared on behalf of Mr Wilde.

Charge Breach of 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.

The particulars of the charge are that Mr Wilde was at all relevant times the trainer of *Florida Pearl*. On 27 December 2016, *Florida Pearl* was brought to the Warrnambool racecourse and ran in Race 8 the *djbowmanracing.com BM64 Handicap* over 1400m. A prohibited substance, being Dexamethasone, was detected in a post-race urine sample taken from *Florida Pearl* following its running in the race.

Plea: Guilty.

Decision: Mr Wilde convicted and fined $15,000 (payment terms to be confirmed between the parties).

Pursuant to AR 177, *Florida Pearl* is disqualified from Race 8 at Warrnambool on 27 December 2016 and the places amended accordingly.

Georgie Gavin
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

SYMON WILDE

RACING VICTORIA CENTRE, FLEMINGTON

THURSDAY, 27 APRIL 2017

MS S. FOLETTI appeared on behalf of the RVL Stewards

MR G. COLDWELL (instructed by Ryan Carlisle Thomas) appeared on behalf of Mr S. Wilde

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CHAIRMAN: Mr Symon Wilde, you have pleaded guilty to a breach of Australian Rule 178, in that on 27 December 2016, you brought the horse Florida Pearl to Warrnambool racecourse for the purpose of engaging in a race where a prohibited substance, dexamethasone or "dex", was detected in the sample taken from it post-race. Florida Pearl in fact won the race, the Benchmark 64 Handicap over 1400 metres.

I accept that the administration of Dexafort, a more powerful form of dex than the more frequently used Dexapent was administered to Florida Pearl at 12 noon on 12 December 2016, that is, 15 days before the race. Whilst the administration was physically performed by Melissa Julius, a staff member, it was so administered essentially at your request and under your supervision. In any event, this is a situation of strict liability and you are responsible for the actions of staff.

Participants in the racing industry and, in particular, trainers were alerted of the potential difficulties involving Dexafort following the much-publicised problems associated with Amralah in the spring of 2015, culminating in a lot of publicity surrounding the scratching from the Melbourne Cup of that year and the subsequent legal action. Further, in May 2015, the Australian Racing Board brought in, published and circulated a notice concerning dex, suggesting that its use in racehorses should be avoided due to its long and unpredictable excretion period. Despite this, you did not consult with any vet, including Dr Wraight who normally treats your horses, or engage in any elective testing. Without seeking expert advice or testing, you seem to have persisted, using a

withhold period of 14 days.

I was referred by Mr Coldwell on your behalf to my decision in the case of Mark Riley, a decision handed down on 27 April 2016. Mr Riley was fined $3500. There are a number of distinctions between Mr Riley's case and yours. Whilst his also involved the administration of Dexafort which was done by his foreman and effectively in his absence, of course given the strict liability that applies, this was no excuse but was a mitigating factor. Next, Mr Riley had sought the advice of two vets as to the withholding period and believed that that period was in the order of seven days. Finally, he had one prior offence in relation to this rule, whereas you have three, so the cases are quite different.

In relation to your record, in relation to breaches of this rule, it is poor. In summary, in 2010 you were fined $1000 by the Board. In 2013, you were fined $12,000, and your stable practices criticised as being, in essence, slapdash. Both of those offences involved bute. On 14 October 2015 you were before me in relation to ibuprofen administration. Because of extenuating circumstances, you were fined $8000, although you were warned that you should have been on high alert.

You are not to be penalised for past offences as such, but they are relevant. As was said by the High Court of Australia in Veen v R (1988) 164 CLR 465, a fresh penalty for past offences should not be imposed. However, a previous history can show that the person charged -

has manifested in his commission of the instant offence a continuing attitude of disobedience of the law. In the latter case, deterrence and protection of society -

and I might interpose, in the present case, of the racing industry and confidence in it -

may all indicate that a more severe penalty is warranted.

Specific deterrence is particularly relevant in your case. You do not seem to have learnt or learnt fully from your past experiences. The protection of the good name of the racing industry has also to be borne in mind. There is also the requirement to consider general deterrence, a message to be sent to trainers and to the racing industry.

There are some mitigating factors to be taken into account. There is your plea of guilty and there is your full cooperation throughout with the Stewards. Then there are the quite powerful character references that have been put forward on your behalf and I take them into account. There is the issue of the amendment of the placings. Florida Pearl was disqualified as the winner of the race and the placings were amended accordingly. This means loss of prizemoney to the owners, including yourself, and loss of the thrill of winning the race and, depending upon what arrangements you had in relation to the horse, there may be the question of the trainer's winning percentage. Perhaps more importantly, it doubtless represents a great disappointment for your fellow owners.

This is a difficult case. You may have improved your stable practices in relation to administration of medication and the like, but what has occurred certainly shows that you have not learnt sufficiently in your previous visits to this Board. Despite some doubt and after considerable weighing of the circumstances, I have decided against the imposition of a period of suspension. I certainly do not agree that a penalty of the size of that imposed in Mark Riley's case is appropriate. Fines of $8000 and $12,000 in the past do not seem to have produced the desired result in your case. I am imposing a fine of $15,000, payment by 31 May 2017. As stated, Florida Pearl is disqualified as the winner of the race in question and the placings of the runners are amended accordingly.
