

HEARING RESULT

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FROM: Registrar – Racing Appeals and Disciplinary Board

DATE: 17 March 2016

SUBJECT: HEARING RESULT AND PENALTY - TRAINER: PETER MOODY

Panel Judge John Bowman (Chair), Mr Chris Fox, Mr Jeremy Rosenthal.

Appearances Mr Jeff Gleeson QC and Mr David Bennett, instructed by Minter Ellison, appeared as counsel for the Racing Victoria stewards.

Mr Matthew Stirling, instructed by Richmond and Bennison, appeared as counsel for Mr Moody.

Charge 1 Breach of AR 175(h)(i)

Any person who administers, or causes to be administered, to a horse any prohibited substance: (i) for the purpose of affecting the performance or behaviour of a horse in a race or of preventing its starting in a race.

Charge 2 Breach of AR 175(h)(ii) [alternative to Charge 1]

The Committee of any Club or the Stewards may penalise: Any person who administers, or causes to be administered, to a horse any prohibited substance which is detected in any sample taken from such horse prior to or following the running of any race.

Charge 3 Breach of AR 178 [alternative to Charges 1 & 2]

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.

Particulars Each of the 3 charges relating to a prohibited substance, being cobalt at a concentration in excess of 200µg/l in urine, which was detected in a pre-race urine sample taken from the horse *Lidari* prior to it running in the *Turnbull Stakes* at Flemington on 4 October 2014.

Plea

Charge 1 – not guilty.

Charge 2 [alternative to Charge 1] – not guilty.

Charge 3 [alternative to Charges 2 & 3] – not guilty.

Decision

Handed down on 16 March 2016.

Charge 1 – the Board **dismisses** this charge.

Charge 2 [alternative to Charge 1] – the Board finds the charge **proved**.

Charge 3 [alternative to Charges 2 & 3] – not required as Charge 2 proven.

Penalty

Mr Moody convicted and suspended for a period of 12 months, of which 6 months is suspended for a period of 12 months provided that Mr Moody does not commit an offence under AR 175(h)(i) or (ii) during the 12 month period of suspension.

The Board orders that the commencement of the period of suspension be deferred until midnight, 24 March 2016, it being the maximum period of deferral of the suspension as permitted by the rules; see Australian Rule 196(6).

Pursuant to the provisions of AR 177, *Lidari* must be and is disqualified from the race in which it started.

Georgie Gavin
Registrar - Racing Appeals and Disciplinary Board

RACING APPEALS AND DISCIPLINARY BOARD**(Original Jurisdiction)***RVL Stewards v Peter Moody**Reasons for Decision*

His Honour Judge J. Bowman Chairman

Mr C. Fox Member

Mr J. Rosenthal Member

Appearances

MR J.J. GLEESON QC with MR D.W. BENNETT (instructed by Minter Ellison) appeared on behalf of the RVL Stewards.

MR M. STIRLING (instructed by Richmond and Bennison) appeared on behalf of Mr P. Moody.

General background

Licensed trainer Mr Peter Moody has pleaded "not guilty" to three charges, two of them being alternative charges, in connection with the running of the horse *Lidari* in the Group 1 Turnbull Stakes at Flemington on 4 October 2014. *Lidari* ran second on that occasion.

- 5 In essence, a urine sample taken from *Lidari* after the Turnbull Stakes produced a positive return to cobalt. There is no dispute but that cobalt is a prohibited substance pursuant to the *Rules of Racing*, if it is at a mass concentration of in excess of 200 micrograms per litre. In the present case, and in the circumstances referred to below, cobalt was detected in the urine sample at 360 to 410 micrograms per litre.
- 10 As shall be discussed, the case for the defence relies upon an attack on aspects of the process which was followed in relation to the testing of the sample taken from *Lidari* (**the AR 178D argument**), and upon the general merits of the case (**the merits argument**).

The matter came before the Board in its original jurisdiction. Mr J Gleeson with Mr D Bennett of counsel appeared on behalf of the Stewards. Mr M Stirling of counsel appeared on behalf of

15 Mr Moody. A considerable number of witnesses gave oral evidence, and a substantial body of material was admitted into evidence. This material included transcripts of many interviews conducted by

Stewards with Mr Moody and others in January/February 2015 and November 2015, and a series of expert reports.

At the outset, we thank counsel for the way in which this quite difficult case was presented. It was
20 contested vigorously, but fairly and without histrionics. Appropriate concessions were made and careful arguments advanced. Many facts were agreed. The Board gained a lot of assistance from the thorough and professional manner in which the case was put before it.

The Rules allegedly breached

Mr Moody is charged with breaches of AR 175(h)(i), AR 175(h)(ii), and AR 178.

25 1. **AR 175(h)(i)**

Pursuant to AR 175(h)(i), the Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:

Any person who administers, or causes to be administered, to a horse any prohibited substance for the purpose of affecting the performance or behaviour of a horse in a race.

30 This could be described as the principal charge facing Mr Moody.

Pursuant to AR 196(5), where a person is found guilty of a breach of AR 175(h)(i), a penalty of disqualification for a period of not less than 3 years must be imposed, unless a special circumstance is found to exist. LR 73A specifies when such a special circumstance may be found.

2. **AR 175(h)(ii)**

35 Alternatively, the Stewards have charged Mr Moody under AR 175(h)(ii). After the same introduction concerning administration of the prohibited substance, it reads:

which is detected in any sample taken from such horse prior to or following the running of any race.

There is no set penalty for this offence. It seems to the Board to be patently a lesser offence than a
40 breach of AR 175(h)(i).

3. **AR 178**

Again alternatively, the Stewards have charged Mr Moody pursuant to AR 178.

This Rule reads as follows:

45 *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.*

Again, there is no set penalty and this is a lesser charge than the principal charge. It also seems to the
50 Board to be of lesser gravity than the first alternate charge.

In relation to this charge, Mr Stirling conceded that, if the defence based upon the AR 178D argument
failed, Mr Moody could not contest guilt pursuant to AR 178.

The Standard or Degree of Proof

There is no dispute that, given the seriousness of the charges and the potential consequences flowing
55 from them, the standard or degree of proof required for the charges to be established is that described in
Briginshaw v Briginshaw (1938) 60 CLR 36. The words of Rich J to the effect that what is required is
a state of comfortable satisfaction on the balance of probabilities are often used. That comfortable
satisfaction can be reached by direct evidence or inference.

The AR 178D argument

60 Mr Moody submits that the Stewards breached the provisions of AR 178D in several ways in relation
to the post-race urine sample taken from *Lidari*, and as a result the Stewards are not permitted to rely on
any of the analysis evidence which was carried out.

At the hearing of this matter, the AR 178D argument was referred to as a potential “knock-out blow”,
on the basis that if the analysis evidence is not admitted, then the charges against Mr Moody cannot be
65 sustained.

To understand the AR 178D argument, it is necessary to have regard to the testing process that was
followed in this case. The Board is assisted in this regard by an Agreed Statement of Facts which was
submitted by the parties in relation to the testing of the post-race urine sample from *Lidari*.

The Agreed Statement of Facts is in a Schedule attached to these Reasons.

70 Mr Moody argues that the Stewards breached AR 178D, which concerns the analysis of samples taken
by Stewards, in three ways. These breaches were described as breaches of the “independent analysis
obligation”, breaches of the “notification obligation”, and breaches of the “independent nomination
obligation”.

75 The acts giving rise to the breaches of the “independent analysis obligation” are said to be the intervention of the Stewards in the laboratory process in directing RASL to split the “B” sample and then refer such samples for the purposes of analysis, so that Mr Moody was deprived of having the first Official Racing Laboratory (**ORL**) analyse the “A” sample and the second ORL analyse the “B” sample, and that ChemCentre failed to refer the “B” sample to a second ORL as required by AR 178D(2)(b) and failed to advise HKJC as the second ORL of the identity of the prohibited substance as required by AR
80 178D(2)(b).

The breaches of the “notification obligation” are said to arise by reason of the failure of the Stewards to immediately notify Mr Moody of the detection of a prohibited substance when Stewards became aware of such on 20 November 2014, as required by AR 178D(2)(a).

85 The acts giving rise to the breaches of the “independent nomination obligation” are said to be that ChemCentre failed to nominate a second ORL to test the reserve sample as required by AR 178D(2)(b) and failed to refer the “reserve portion of the same sample” (i.e. the “B” sample) to a second ORL for analysis, and that the Stewards in circumstances where they had no power or authority to do so, installed themselves as the party under 178D(2)(b) which nominated the second ORL, and directed RASL to refer part of the reserve portion of the “B” sample to HKJC as the second ORL for analysis.

90 The Stewards in answer submit (amongst other things) that the procedures set out in AR 178D(2)-(7) are optional and facilitative only, in the sense of providing an evidentiary short cut by prescribing that the two certified findings referred to in AR 178D(2)-(7) constitute prima facie evidence and that the Stewards may avail themselves of that short cut should they choose to do so, but they are not required to. Consequently any departures from AR 178D(2)-(7) either are not breaches of AR 178D by the
95 Stewards, or are of no consequence in circumstances where (as in this case) no challenge is made by Mr Moody to the accuracy of the testing that was done.

The Board accepts the submission of the Stewards that they are not prevented from proving that a prohibited substance was administered by evidence other than a certificate or certificates produced pursuant to the processes contemplated in AR 178D. So much is consistent with a number of authorities,
100 including *Riley v Racing Victoria Ltd* [2015] VSC 527, *Harper v The Racing Penalties Appeal Tribunal of Western Australia* [2001] WASCA 217, and *In the matter of the Appeal of Gregory Alt* (Reasons of the Appeal Panel of the NSW Thoroughbred Racing Board dated 4 August 2005).

This disposes of much of Mr Moody’s submissions in relation to AR 178D, and in particular as to the effect for which he contended of the “independent analysis obligation” and the “independent nomination
105 obligation”. Further, even if there were breaches of the contract constituted by the Rules of Racing by reason of these matters, the Board is not satisfied that these breaches are capable of having the consequences contended for by Mr Moody, namely the inadmissibility of the analysis evidence that was

carried out.

110 As for the notification obligation, and in particular the failure of the Stewards to notify Mr Moody of
the finding of the detection of cobalt at above the permitted level, this may be of a different character
from the failures to comply with steps which are concerned with the testing of the sample, given that it
might be said to be concerned with procedural fairness and affording the opportunity for a trainer, for
example, to attend the opening and testing of a “B” sample. The Board was not referred to any authorities
where a failure to notify a trainer upon the initial finding was the basis of the alleged non-compliance
115 with AR 178D (or equivalent provision).

However, it is not necessary for the Board to reach a concluded view as to the effect of non-compliance
with the notification elements which are referred to in AR 178D(2)(a) and AR 178D(5)(a) given that, in
the Board’s view, at most, any failure on the part of the Stewards to notify Mr Moody could only affect
the admissibility of the evidence as to testing which any such notification was to precede. The testing
120 which followed was by the HKJC. In the present case, if there was any relevant failure to notify Mr
Moody that failure was, in the Board’s view, not after the initial screening analysis of the “A” sample
on 20 November 2014 but was following the confirmatory analysis of the portion of the “B” Sample by
ChemCentre carried out between 11 and 22 December 2014, which means that the evidence of the initial
screen testing and of the confirmatory analysis by ChemCentre are unaffected. So too is the evidence of
125 the analysis conducted of the stored sample pursuant to AR 178DD, which is referred to in paragraph
18 of the Agreed Statement of Facts. As noted, the accuracy of these tests is not in dispute, and the
results are referred to in the Agreed Statement of Facts (paragraphs 5, 12 and 18). All of these analyses
detected cobalt at above the prohibited mass concentration, and at 360 or 380 micrograms per litre, and
the Board is entitled to rely on this evidence.

130 For these reasons the Board does not accept the AR 178D argument of Mr Moody.

The merits argument

(a) The charge under AR 175(h)(i)

For this charge to be proven, the Board must be comfortably satisfied that Mr Moody not only
administered or caused to be administered the prohibited substance, namely cobalt at above the
135 permitted level, but did so for the purpose of affecting the performance of *Lidari* in a race.

The burden of proof is borne by the Stewards.

The Stewards’ case

The Stewards contend that the explanation advanced on behalf of Mr Moody for the presence of the

140 above threshold cobalt that a product known as *Availa* was fed to *Lidari* in far greater amounts than was initially disclosed to the Stewards (the **Subsequently Alleged Supplementation**) should be rejected, and in circumstances where the post-race urine sample from *Lidari* discloses cobalt at substantially above the permitted level, which cannot be explained by *Availa* in the amounts initially disclosed (the **Initially Declared Supplementation**), the inference should be drawn, and the Board should be comfortably satisfied, that Mr Moody administered cobalt or caused cobalt to be administered to *Lidari* 145 for the prescribed purpose.

In support of this inference, the Stewards point to the absence of any suggestion of interference by any current or former staff member, or any security breach.

The Stewards further contend that this is a circumstantial case, and it is not necessary for the purposes of the charge for the Board to determine or be satisfied as to exactly how or when the cobalt came to be administered to *Lidari*. 150

The Defence case

Mr Moody contends that there is not a body of evidence in this case from which the inference of administration of cobalt for the prescribed purpose can be drawn. That is for reasons including the Subsequently Alleged Supplementation, which the scientific evidence suggests is a plausible explanation for the detected level of cobalt (if such supplementation occurred), and the absence of any other evidence pre-dating the Turnbull Stakes linking or connecting Mr Moody with cobalt or the administration of it. 155

Background

Lidari, previously a European racehorse, first arrived in Mr Moody's stables in January 2013, and returned to Mr Moody's stables in July 2014 for a Spring campaign. 160

Mr Moody has trained other European imports and had noticed that they often had small, shelly or brittle feet which could result in hoof problems when racing on Australian tracks.

Accordingly, for some years prior to the arrival of *Lidari*, Mr Moody had been using for European horses a product called *Availa*, a powder which is added to feed and which is intended to promote hoof growth. 165 The use of *Availa* was recommended to Mr Moody, probably by his horse chiropractor, but Mr Moody was quite definite that the use of any supplements or additives in his stables has to be cleared by him. Such substances can only be given to a Moody trained horse if approved by him.

Availa contains cobalt. We shall not go into the scientific evidence. Suffice to say that *Availa* contains a modest amount of cobalt – just over 21 micrograms per recommended daily dose of 8.95 grams. *Availa*

170 was added to *Lidari's* feed shortly after it arrived in Mr Moody's stable and was continued to be used when the horse was stabled with him.

Another European import in the Moody stable at the relevant time, namely *Brambles*, was also given *Availa*.

The normal stable routine at the time was for horses to be given a vitamin injection consisting of
175 B Complex, vitamin B12 and Cophos two days prior to racing, although for reasons that have not been explained, *Lidari* received a vitamin injection on 3 October 2014, the day before the Turnbull Stakes. These ingredients contain cobalt in small amounts. Vitamin injections are prepared by the stable staff, then left for the stable vets to administer them subsequently. The vet who administered the injection to *Lidari* on 3 October 2014, Dr Amber Thiel, consequently had no direct knowledge of what was in the
180 injection given to *Lidari* on that day.

Consideration and findings

The amount of *Availa* fed to *Lidari* generally and in the period leading up to its run in the Turnbull Stakes were central issues before the Board.

Much of the evidence was concerned with the Subsequently Alleged Supplementation of *Availa*, which
185 first emerged when Mr Moody filed a Case Statement in this proceeding on 29 September 2015.

The Case Statement asserted that significantly larger amounts of *Availa* had been given to *Lidari* in the period prior to the Turnbull Stakes than had originally been disclosed to the Stewards in January/February 2015 during the course of interviews by the Stewards, and that stable employee Mr Rammohan Myala had done much of the feeding of *Lidari* at the relevant time, rather than Mr Neil
190 Alexander, as the Stewards had previously understood.

Mr Moody's leading "feed man" is and was Mr Alexander. Both Mr Alexander and Mr Myala have been with Mr Moody for some years.

Mr Alexander and Mr Myala gave evidence. Neither was convincing or impressive. Both were poor witnesses. The unreliable evidence of Mr Alexander hardly clarified the situation, with about five
195 different versions of the number of scoops and the size of the scoop or scoops used for *Availa* being advanced. Mr Myala was much more adamant, two scoops in the morning and one scoop in the afternoon (with a large 30 ml scoop being used each time), but his version does not sit with the ultimate version given by Mr Alexander or with the feeding and supplementation instructions for *Availa* written on the whiteboard in the stables. It is not even completely clear who fed *Lidari* and for how many days per
200 week at the relevant time.

Mr Moody himself gave the impression of having no direct knowledge, and even little general idea, of the level of *Availa* fed to *Lidari*.

The Board is also sceptical about the Subsequently Alleged Supplementation for a number of additional reasons, including:

- 205 (i) that Mr Myala was said to have been involved in the feeding of *Lidari* only emerged many months after Mr Moody was notified of the detection of cobalt in *Lidari*'s post-race urine sample;
- (ii) the timing of this revelation, being after the charges were laid, and after Mr Moody had been provided with the scientific testing, which had been conducted for the Stewards on the basis of the Initially Declared Supplementation, as had been disclosed to the Stewards by Mr Moody and Mr Alexander when they were first interviewed by the Stewards in early 210 2015;
- (iii) the inconsistencies between the evidence of Mr Moody, Mr Alexander and Mr Moody's chief veterinarian Dr Peter Angus as to how the Subsequently Alleged Supplementation was discovered; and 215
- (iv) the stark contrast with the test results for *Brambles*, which is alleged to have been given the same or similar amounts of *Availa* as *Lidari* over a lengthy period, yet when tested on 13 September 2014 returned a reading for cobalt in a post-race urine sample of only 26 micrograms per litre.

220 However, even if the Board were not to accept that *Lidari* was given *Availa* in accordance with the Subsequently Alleged Supplementation, it does not necessarily follow that the Board should be comfortably satisfied that Mr Moody administered or caused to be administered cobalt at above the permitted level for the prescribed purpose.

In the absence of the Subsequently Alleged Supplementation, there is no evidence to explain how *Lidari* 225 came to have cobalt at the levels detected in its post-race urine sample, save for the suggestion, by Mr Moody's expert Dr van Eps, that even the amounts of *Availa* as initially declared (i.e. one scoop a day) could possibly bring about this result, given the lengthy period of supplementation.

The Board notes in this regard that the Stewards do not contend that the vitamin injection given to *Lidari* on 3 October 2014 was the cause, notwithstanding the unusual circumstances in which that vitamin 230 injection was given.

This gap or "vacuum", as it was referred to at the hearing, arises notwithstanding that the Stewards have

had full access to all relevant records of Mr Moody, and the benefit of stable inspections and the like.

The Stewards contend that this vacuum should be filled by inference.

235 On balance, the Board is not comfortably satisfied that it should do so. More particularly, whilst we are satisfied that the prohibited substance found its way into *Lidari* as a result of something which occurred within the stables, we are not comfortably satisfied that we should draw the inference from the evidence before us that Mr Moody administered or caused to be administered cobalt for the purposes of affecting the performance of *Lidari* in the Turnbull Stakes on 4 October 2014.

The Board had the benefit of Mr Moody's evidence.

240 In several respects, Mr Moody's evidence was surprising, including his attitude towards cobalt, the limited effort he professed to make to find out the cause of the cobalt reading after first being advised of it in January 2015, his subsequent professed confusion about the barn in which *Lidari* had been stabled in October 2014, the lack of detailed recall by Mr Moody as to how he came to be aware of the Subsequently Alleged Supplementation notwithstanding the importance of the discovery to his defence
245 of this case, and his apparent indifference or disinterest as to what might be contained in products which were being used in his stables.

However, carelessness or even negligence is not purposeful administration. Similarly, mere suspicions are neither direct evidence nor, in this case, evidence from which a persuasive inference can be drawn.

250 The Board does not consider that Mr Moody's evidence was such that it should conclude that Mr Moody was being untruthful or lacked credibility in his denial of having any explanation for the cobalt reading other than what might have been due to the *Availa* supplementation.

The Board in reaching its conclusion has also taken into account that no other horses of Mr Moody returned an above threshold positive to cobalt (including during the period that the Stewards did not notify him of the result for *Lidari*), and that *Lidari* did not return an above threshold positive to cobalt
255 on any other occasion on which it was tested.

Thus, whilst we are satisfied that the prohibited substance found its way into *Lidari* as a result of something occurring within the stables, we are not comfortably satisfied that Mr Moody administered or caused to be administered that substance for the purpose of affecting the performance or behaviour of a horse - in this instance, *Lidari* - in a race.

260 Accordingly, the charge pursuant to AR 175(h)(i) is dismissed.

(b) The charge under AR 175(h)(ii)

For this charge to be established, it must be proven that Mr Moody administered or caused to be administered to *Lidari* cobalt above the threshold level. That it was so detected in the analysis of the urine sample taken from *Lidari* after the running of the Turnbull Stakes is not disputed.

What distinguishes the second charge from the first is that the requirement of a purpose of affecting the performance or behaviour of a horse in a race is absent.

As already noted, there is no suggestion in this case of any third party involvement in *Lidari*'s test result, and we are satisfied that the prohibited substance found its way into *Lidari* as a result of something occurring within the stables.

As the licensed trainer, Mr Moody was and is responsible for the horses he trains, including *Lidari*. For a number of reasons, which are discussed further below, we find that Mr Moody's stable operations were far from satisfactory.

Indeed, at times it seemed that the many shortcomings at Mr Moody's stables were being presented as a defence to the charges against him.

Regardless of the delegation of various tasks and responsibilities within the stable, *Lidari* was under the care and control of Mr Moody and the buck stops with him. At the very least, Mr Moody failed to prevent the prohibited substance finding its way into *Lidari* as a result of something occurring within his stables.

A considerable part of Mr Moody's defence was focused on *Availa* and the administration of it by Mr Alexander and Mr Myala. Whilst the *Availa* arguments advanced on behalf of Mr. Moody may be of assistance to him in resisting a charge under AR 175(h)(i), with its purposive requirement, those arguments are no defence to the charge under AR 175(h)(ii).

Mr Alexander and Mr Myala were under Mr Moody's control. They were his employees. All supplements fed to horses in his stables had first to be approved by him and their provision to each individual horse authorised. The ultimate responsibility resided with him.

The Board is comfortably satisfied that Mr Moody caused to be administered to *Lidari* a prohibited substance which was detected in a sample taken from that horse following the running of the Turnbull Stakes.

It is not necessary for the Board to reach any conclusion about which of the Initially Declared Supplementation or the Subsequently Alleged Supplementation was administered to *Lidari*, or whether

Availa was the primary cause of the above threshold post-race sample. The Board makes no such conclusions.

We find the charge pursuant to AR 175(h)(ii) to be proven.

295 **(c) *The charge under AR 178***

As a finding of guilt under AR 175(h)(ii) has been made, there is then no need for us to make a finding in relation to the charge under AR 178. It is an alternative charge. Clearly the ingredients of this charge have been made out, but, in the circumstances, no ruling is required in relation to it.

Concluding Remarks

300 There are certain additional matters about which the Board wishes to make comment.

It is readily apparent from the evidence before us that that there was significant carelessness, for which Mr Moody was responsible, in relation to the operation of his stables. This was particularly so in relation to the administration of cobalt, as well as general feeding, supplementation and injection procedures.

Some of Mr Moody's answers given in evidence underline this high level of carelessness.

305 Mr Moody said that he did not even know that there was cobalt in *Availa* until June 2015. He was ignorant as to the dosages horses were receiving. He left it to others to instruct his staff, his explanation being that he is not a "*people person*". He said that his understanding of *Availa*, a substance being administered to horses under his care, was and is "*nil*". This is notwithstanding that a warning concerning cobalt had been issued and circulated by the Stewards months before. It was well publicised
310 that, once the threshold had been reached, cobalt was a prohibited substance, and that the consequences of its administration could be dire.

Further, Mr Moody stated that, in hindsight, following the initial visit of the Stewards in January 2015, he probably should have gone through his whole stable process so as to identify who had been feeding what horses what substances and when. His admission lays bare a clear lack of knowledge on the part
315 of Mr Moody as to these matters. Insofar as any system of supervision was in place, it was inadequate to say the least. Mr Moody had no recollection of ever having a discussion with his staff about being careful as to what substances were put into horses. Apparently, he left that to others.

When interviewed, he had said to the Stewards that "*I'm making myself look incompetent*". When it was put in cross-examination that his story required this Board to believe that he'd been completely
320 incompetent, his answer was, "*in this point, yes*".

Mr Moody also admitted that he would not have had an awareness as to what was on the stable

whiteboard as to the feeding of *Lidari*. The failure to give *Lidari* the vitamin injection on the correct day was Mr Moody's admitted omission. Also of interest is his apparently frank statement, "*I didn't know what things in my feed room contained cobalt*".

325 A further matter of concern to the Board is the processes at Mr Moody's stables in relation to vitamin injections.

The procedure was for someone from the stables to fill the various syringes and place them outside the stalls of the horses that were to be injected. At a later time, a veterinary surgeon would come along and administer the injection, apparently without checking and with no direct knowledge as to what was in
330 fact in the syringe. How much direct interest Mr Moody took in this procedure is questionable.

This reflects poorly upon the level of care taken, both by Mr Moody and by his veterinary surgeons, Dr Peter Angus and his assistant, Dr Amber Thiel.

We appreciate that Dr Angus has worked with Mr Moody and been his principal veterinary surgeon for many years, but nevertheless this seems to be a slapdash method of administering injections. Further,
335 supervision seems to have been at a minimum. That high level of carelessness within Mr Moody's stable is again evident.

Result

In this case, the charge pursuant to AR 175(h)(i) is dismissed. Mr Moody is found guilty of the charge pursuant to AR 175(h)(ii).

340 We shall hear counsel on the question of penalty.

SCHEDULE

AGREED STATEMENT OF FACTS

1. *A post-race urine sample was taken from the horse Lidari on 4 October 2014 at 4:55pm. That sample was divided into two portions (The **A Sample** and the **B Sample**), each of which was put into a separate bottle. A control solution was also put into a separate bottle (**Control Solution**). The three bottles were collectively given the sample number V318714.*
2. *The A Sample, B Sample and Control Solution were provided by Racing Victoria (**RVL**) to Racing Analytical Services Limited (**RASL**) on 6 October 2014.*
3. *RASL analysed part of the A Sample for substances other than cobalt. At all relevant times, RASL did not have the capability of analysing urine for the presence of cobalt.*
4. *RASL sent part of the A Sample to Racing Chemistry Laboratory ChemCentre (**ChemCentre**) on 8 October 2014 for cobalt screening.*
5. *ChemCentre screened part of the A Sample for cobalt. The screen returned a urinary cobalt concentration of 360 micrograms per litre. On 20 November 2014, ChemCentre notified RASL of this result in writing.*
6. *By email dated 25 November 2014, RASL sent to RVL a copy of ChemCentre's 20 November 2014 written notification in relation to the screen.*
7. *By email dated 4 December 2014, Naomi Selvadurai of RASL informed Kane Ashby of RVL: "There was insufficient urine in sample V318714 for further analysis, and so was not sent."*
8. *By email dated 8 December 2014 to David Batty and Naomi Selvadurai of RASL, Kane Ashby of RVL proposed the splitting of B Sample and Control Solution into two parts. The email asked that RASL confirm its agreement to this proposed process.*
9. *By email dated 9 December 2014 to Kane Ashby of RVL and Naomi Selvadurai of RASL, David Batty of RASL sent a draft document entitled "Inspection, Splitting and Repackaging of Reserve Urine and Control Samples in the Presence of an Independent Witness". By email dated 9 December 2014 to David Batty of RASL, Kane Ashby of RVL provided comments on that draft document.*
10. *On 10 December 2014, the B Sample and Control Solution were split by RASL in the presence of an independent witness, barrister Mr Serge Petrovich. Half of the B Sample was transferred*

into a new bottle and half of the Control Solution was transferred into a new bottle, which two new bottles together were given the sample number V324500. The other half of the B Sample was transferred into a new bottle and the other half of the Control Solution was transferred into a new bottle, which two new bottles together were given the sample number V326328. Mr Petrovich and David Batty of RASL signed a document entitled "Inspection, Splitting and Repackaging of Reserve Urine and Control Samples in the Presence of an Independent Witness" describing the procedure which occurred.

11. *Sample V324500 was sent by RASL to ChemCentre under cover of a letter from Naomi Selvadurai of RASL to Mr J White of ChemCentre dated 11 December 2014.*
12. *ChemCentre analysed sample V324500 and detected the presence of cobalt:
 - (1) *in the urine sample at a concentration of 380 micrograms per litre, with a measurement of uncertainty of 38 micrograms per litre at equal to or greater than a 99.7% level of confidence;*
 - (2) *in the control sample at a concentration of 0.6 micrograms per litre.**
13. *ChemCentre issued a Certificate of Analysis dated 22 December 2014.*
14. *By letter dated 29 December 2014 to Dayle Brown of RVL (sent by email dated 29 December 2014), David Batty of RASL referred to the splitting of sample V318714 into samples V324500 and V326328 and enclosed ChemCentre's Certificate of Analysis dated 22 December 2014.*
15. *Sample V326328 was sent by RASL to Hong Kong Jockey Club Racing Laboratory (HKJC) under cover of a letter from David Batty of RASL to Dr T Wan of HKJC dated 29 December 2014.*
16. *HKJC analysed sample V326328 and detected the presence of cobalt in the urine sample at a concentration of about 410 micrograms per litre. The control solution was negative. HKJC issued a Test Report and Analysis Report each dated 10 January 2015 which recorded these results.*
17. *By letter dated 12 January 2015 to Dayle Brown of RVL (sent by email dated 12 January 2015), David Batty of RASL sent a copy of HKJC's Test Report and Analysis.*
18. *ChemCentre stored part of the A Sample which was sent to it by RASL on 8 October 2014. In December 2015, ChemCentre analysed that stored part of the A Sample and detected the presence of cobalt therein at a concentration of 380 micrograms per litre, with an expanded*

measurement uncertainty for cobalt determination at the threshold concentration (200 micrograms per litre) of 20 micrograms per litre at >99.7% confidence. ChemCentre issued a Certificate of Analysis dated 7 October 2015 which recorded this result.

- 19. RASL, ChemCentre and HKJC were each at all relevant times expressly listed as an Official Racing Laboratory under AR1.*

**TRANSCRIPT OF
PROCEEDINGS**

RACING APPEALS AND DISCIPLINARY BOARD

**HIS HONOUR JUDGE J. BOWMAN, Chairman
MR J. ROSENTHAL
MR C. FOX**

EXTRACT OF PROCEEDINGS

PENALTY

TRAINER: PETER MOODY

MELBOURNE

THURSDAY, 17 MARCH 2016

MR J.J. GLEESON QC, with MR D.W. BENNETT (instructed by
Minter Ellison) appeared on behalf of the RVL Stewards

MR M.J. STIRLING (instructed by Richmond and Bennison) appeared
on behalf of Mr P. Moody

CHAIRMAN: We are of the opinion that in all the circumstances, suspension is the appropriate penalty. A clear message must be sent. Mr Moody, you are suspended for a period of 12 months, six months of which are suspended for a period of 12 months, provided that you do not commit an offence under AR 175(h)(i) and (ii) during that 12-month period of suspension. The six-month period of suspension will commence at midnight on 24 March 2016. Pursuant to AR 177, Lidari must be and is disqualified from the Turnbull Stakes on 4 October 2014 and the placings are amended accordingly.

RACING APPEALS AND DISCIPLINARY BOARD

(Original Jurisdiction)

RVL Stewards v Peter Moody

Reasons for Decision - Penalty

His Honour Judge J. Bowman Chairman

Mr C. Fox Member

Mr J. Rosenthal Member

Appearances

MR J.J. GLEESON QC with MR D.W. BENNETT (instructed by Minter Ellison) appeared on behalf of the RVL Stewards.

MR M. STIRLING (instructed by Richmond and Bennison) appeared on behalf of Mr P. Moody.

1. Licensed trainer Peter Moody was found guilty on 16 March 2016 of an offence under AR 175 (h)(ii) arising out of a post-race urine sample from the horse *Lidari* trained by him which ran at Flemington in the Group 1 Turnbull Stakes on 4 October 2014.
2. The facts and circumstances relating to the offence, and the reasons for the decision of the Board, are set out in the Board's Reasons for Decision delivered on 16 March 2016.
3. On 17 March 2016, following submissions, the Board imposed a penalty on Mr Moody of a suspension for a period of 12 months of which 6 months is suspended for a period of 12 months provided Mr Moody does not commit an offence under AR 175(h)(i) or (ii) during the 12 month period of suspension.
4. It was agreed by both parties at the hearing on penalty that, in the interests of finally disposing of the matter, the Board's decision as to penalty would be announced immediately and full written Reasons for the decision were not required. However, after the handing down of the decision on penalty, the Stewards changed position and requested that written Reasons be provided. This was notwithstanding that there would be some

delay involved due to the commitments of one of the Board's members. This is a reality of which the Stewards were well aware.

5. Critical to the penalty imposed by the Board is that the Board found Mr Moody guilty of an offence under AR 175(h)(ii), but not of an offence under AR 175(h)(i). This is a fundamental difference between the present case and other recent cases before the Board involving cobalt where offences under AR 175(h)(i) have been found. As pointed out in the Reasons for Decision dated 16 March 2016, a charge under AR 175(h)(ii) is a patently lesser offence than a breach of AR 175(h)(i). Whereas an offence under AR 175(h)(i) carries a mandatory penalty of a 3 year disqualification unless a special circumstance is found, there is no such mandatory penalty for an offence under AR 175(h)(ii).
6. The Board was directed to a number of decisions on penalty in other jurisdictions for cobalt related offences. Whilst these decisions are of relevance from a parity perspective, each matter has to be dealt with on its own facts and circumstances and in light of the offending conduct found to exist. The Board considers the present case to be quite different from other cases which were referred to.
7. The Board also considers the present case to be significantly different from other recent cobalt cases which have come before it. This is not only because the principal charge in the present case was dismissed, but also for reasons including that the Board was not satisfied that Mr Moody was being untruthful or lacked credibility in his denial of having any explanation for the cobalt reading other than what might have been due to the *Availa* supplementation - see Page 9, Lines 249 and following of the Reasons. This is in stark contrast with other recent cases before the Board concerning cobalt, in which the Board, in referring to the persons charged, used varying terms such as not being credible witnesses, having the capacity to lie, prevarication, evasion and the like. Mr Moody may have been careless, but we were not, and are not, satisfied that he deliberately attempted to mislead either this Board or the Stewards.
8. In determining the appropriate penalty in the present case, the Board had regard to a number of factors including:
 - (a) the circumstances of the offence, as detailed in the Reasons;

- (b) the seriousness of the offence, involving the administration of cobalt at above the threshold level;
 - (c) general and specific deterrence;
 - (d) the integrity and image of racing, particularly given that the offence related to a post-race sample taken from a horse following its running in a Group 1 race during the Spring Racing Carnival;
 - (e) penalties imposed by this Board for offences under AR 175(h)(ii);
 - (f) Mr Moody's prior record;
 - (g) the impressive evidence of Mr Moody's good character.
9. An offence under AR 175(h)(ii), whilst of less gravity than an offence under AR 175(h)(i), is nonetheless a serious charge.
10. In relation to general deterrence, the message must be sent that the causing of the administration of a prohibited substance by a trainer, even if not for the purpose of affecting performance, is a serious matter and will not be tolerated. As we said in our principal decision in relation to AR 175(h)(ii), carelessness is not a defence and a trainer cannot hide behind it. Specific deterrence is also to be borne in mind. The lack of care of Mr Moody has already been emphasised and the Board was assured that he had taken steps to remedy shortcomings. However, the gravity of the situation resulting from that lack of care must be brought home to him.
11. As regards the penalties handed down to trainers for breaches of AR 175(h)(ii) in this jurisdiction, consistency or parity must in these circumstances look to the charge in respect of which the licensed person is found guilty. The prohibited substance to which the charge relates is relevant but not determinative. In the last few years, there have been three findings of offences under AR 175(h)(ii) in this jurisdiction. None of them relate to cobalt. Mr Chris Calthorpe was disqualified for 6 months, 2 of which were suspended. Ms Jody Thompson was suspended for a period of 3 months. Mr Paul Preusker was suspended for a period of 6 months, with 3 months suspended.

12. In the Board's view, given the circumstances, the penalty in the present case should be at the upper end of penalties for breaches of AR 175(h)(ii).
13. The Board considered Mr Moody's prior record in terms of transgressions to be good. There have been some presentation and race day treatment offences, but these need to be put in the context of a large racing stable with a substantial number of race horses over many years. There have not been any previous offences of a serious kind similar to the offence for which he has been found guilty in the present case.
14. A further consideration was the practical effect of any difference between the disqualification and suspension. In this regard, we accepted what we were told by those representing the Stewards - namely, that in practical terms of the day-to-day running of a stable, there is no difference. Disqualification however carries with it the additional stigma or penalty of not being able to attend racecourses, yearling sales and the like. Such is the effect of interplay between AR 182 and AR 183B. This was important, given the opinion which we had formed of Mr Moody and his credibility. Whilst we were of the view that he should not be able to participate in the running of a stable for the relevant period, we were not of the view that he should be banned from attending those places from which he would be excluded if disqualified.
15. In all the circumstances, and bearing in mind Mr Moody's carelessness and his position as a leading trainer, suspension for 12 months with 6 months in turn suspended was considered by the Board to be the appropriate penalty for the offence under AR 175(h)(ii) which was found in this case.