



**Racing
Victoria**

**RACING APPEALS
AND
DISCIPLINARY BOARD**

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DECISION

**RACING VICTORIA STEWARDS
and
KELVIN BOURKE**

Date of Hearing 18 October 2017

Panel Judge Bowman (Chair)

Appearances Rhys Melville appeared for the stewards.
Tim Purdey of counsel appeared on behalf of Mr Bourke.

Charge Two breaches 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.

Summary The charges relate to a prohibited substance, being Phenylbutazone and its metabolite Oxyphenbutazone, which was detected in a pre-race blood sample (Charge 1) and a post-race urine sample (Charge 2) taken from the horse *Can't Refuse* prior to and after it ran in Race 8 the *Le Pine Funerals Handicap* (1800m) at Sandown on 26 July 2017.

Plea Guilty - to one breach of AR 178

Decision On charge 1, Mr Bourke convicted and fined \$10,000.
Payment terms - 60 days.

Charge 2 is struck out.

In accordance with AR 177, *Can't Refuse* is disqualified from Race 8 at Sandown on 26 July 2017.

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

KELVIN BOURKE

RACING VICTORIA CENTRE, FLEMINGTON

WEDNESDAY, 18 OCTOBER 2017

MR R. MELVILLE appeared on behalf of the RVL Stewards

MR T. PURDEY appeared on behalf of Mr K. Bourke

CHAIRMAN: Mr Kelvin Bourke, you have been charged with two breaches of AR 178 in relation to positive returns in pre and post-race samples taken from the horse, Can't Refuse, which was in the Le Pine Funerals Handicap at Sandown racecourse on 26 July last. Both samples proved positive to phenylbutazone and oxyphenylbutazone, a metabolite, but henceforth I shall simply refer to it as "bute".

These are serious offences within the meaning of the rules. Bute is a prohibited substance. You have pleaded guilty to one charge and did so virtually from the outset. Essentially your explanation comes down to stable error. The reason that you have pleaded guilty to one of the two charges, as submitted by Mr Purdey on your behalf, is that the two positive charges are pre and post-race. There is no suggestion of two administrations or the like. It is all one administration of effectively one substance, involving one horse and in one race.

I understand the position of the Stewards, namely that technically there are two offences. However, as I indicated, I intend to punish you on one charge only, namely the administration of bute that was found in the pre-race blood sample. Charge 2, in relation to the post-race urine sample, is struck out.

As stated, it is accepted by the Stewards that what occurred, to use Mr Melville's words, was a stable muck-up. It is not a deliberate administration. The best possible explanation seems to be that the substance was used or intended to be used for administration to another horse that was

not racing and an employee inadvertently administered it to Can't Refuse. The error in your stable practice seems to have been the leaving of the syringe and its contents near the horses rather than in the medication room.

Whatever the cause, I accept that this was not a deliberate administration but something that occurred because of lax stable practices. This was indeed a big stable muck-up. I accept that the situation has since been remedied but it should never have occurred.

Positive swabs, administration of prohibited substances and the general impression created by the misuse of drugs in the industry all create a very bad impression. Public confidence in the fairness and integrity of the racing industry is eroded. By way of general deterrence, trainers must get the message that misuse of prohibited substances, even if accidental, must be avoided.

The Stewards are seeking a substantial fine. You have been a successful trainer for many years and were a top jumps jockey before that. I understand that you are now winding back your race training activities and concentrating on pre-training and the like.

You do not have an unblemished record. You have prior related convictions. In February 2013, SAJC Stewards fined you \$10,000 following a post-race urine sample that was in essence positive to ibuprofen. In October 2009 you were disqualified for five months in this state for the administration of a

prohibited substance, resulting in an elevated TCO2 reading.

Mr Melville referred to the fine imposed on Mr Symon Wilde in the amount of \$15,000 imposed by this Board for an offence such as this. I agree with Mr Purdey that Mr Wilde is in a somewhat different category, having offended more than once and, in addition to fines and at the same time as fines, received at least two warnings from this Board to the effect that his stable practices must be improved. So I do not intend to fine you \$15,000. However, this is a bad piece of stable management that has produced a very unfortunate result.

The fine imposed in relation to the first charge is \$10,000 and the second charge is struck out, with time to pay of two months.
