

## 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:** 26 November 2014

**SUBJECT:** **HEARING RESULT – TRAINER: LEE HUNTER**  
*as heard on 29 October & 25 November 2014*

---

**Panel** Judge Russell Lewis (Chair), Mr Jeremy Rosenthal, Dr June Smith.

**Appearances** Mrs Hunter appeared on her own behalf.  
Mr Tony Burns and Mr James Ogilvy appeared on behalf of the Stewards.

**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 charge relates to a prohibited substance, being o-Desmethylvenlafaxine, detected in a post-race urine sample taken from the horse *Nippa Bleu* at Geelong racecourse on 20 May 2014.

**Plea** Not guilty.

**Decision** The Board finds the charged proved.

Mrs Hunter convicted and fined \$1,000.  
Fine due on or before 31 March 2015.

Pursuant to AR 177, *Nippa Bleu* disqualified as winner of Race 7 the *Thirsty Camel Bottle Shops Fillies & Mares BM64 Handicap* (2000m) and the places amended accordingly:

*1<sup>st</sup> – Princess Wakefield, 2<sup>nd</sup> – God Help Her, 3<sup>rd</sup> – Dynamic Balance, 4<sup>th</sup> – More Than Ameira, 5<sup>th</sup> – Born This Way, 6<sup>th</sup> – Rory's Gold, 7<sup>th</sup> – Vivacious Miss, 8<sup>th</sup> – Gamelist, 9<sup>th</sup> – Doomkitty.*

---

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

***RVL Stewards v Lee Hunter  
Reasons for Decision***

Judge R Lewis	Chair
Mr J Rosenthal	Member
Dr J Smith	Member

---

Lee Hunter you have been charged with a breach of AR 178 which is in the following terms:

*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:

1. You are, and were at all relevant times, a trainer licensed by Racing Victoria.
2. You are, and were at all relevant times, the trainer of *Nippa Bleu*.
3. On 20 May 2014, *Nippa Bleu* was brought to the Geelong racecourse and ran in the Thirsty Camel Bottle Shops Fillies & Mares BM64 Handicap over 2000 metres (**the race**).
4. A prohibited substance, being o-Desmethylvenlafaxine, was detected in the post-race urine sample taken from *Nippa Bleu* on 20 May 2014.

The charge is serious and accordingly the standard of proof is that laid down in the well known case of *Briginshaw v Briginshaw* (1938) 60 CLR 336. See also *Karakatsanis & Anor v Racing Victoria Limited* [2013] VSC 434.

The Board must be comfortably satisfied that the charge has been proved having regard to, inter alia, the gravity of the offence and the consequences which flow from a conviction.

In this case there is no dispute concerning the accuracy of the analysis, that is, that the sample which was analysed contained a prohibited substance namely O-Desmethylvenlafaxine (**ODV**.)

The stewards are not required to establish how or by what route the prohibited substance came to be in the horse's system.

Mrs Hunter denies that the horse ever received intentionally or inadvertently the parent drug Venlafaxine (**VLF**) or ODV.

Rather, she has sought to explain the finding of the prohibited substance in the urine sample by alleging that the sample taken from the horse was subsequently contaminated.

Thus, the issue in this case is whether when the urine sample was taken from the horse it contained the prohibited substance or whether between the time the urine sample in the collection pot was handed to Dr Corver and the time it was poured into the sampling jars it was contaminated.

The stewards accept that they bear the onus of satisfying the Board that the explanation proffered by Mrs Hunter should be rejected.

### **The Stewards' Case**

The stewards' case is that from the time the urine sample was taken from the horse all the protocols were in place in relation to collection and sealing.

In short, the stewards submit that all proper steps were taken to ensure the integrity and security of the sample.

Mrs Hunter's explanation is only concerned with the period during which the urine collection pot was handed by the swabbing attendant to the testing supervisor Dr Corver, a veterinarian, and the time the samples were sealed by Dr Corver.

### **The Explanation**

Mrs Hunter's explanation is that her husband, Ian Hunter, had been treated for many years for depression and took the prescribed drug Efexor on a daily basis. Efexor is a synthetic form of the parent drug and its major metabolite is ODV.

She argues that after the urine sample was taken in the swabbing stall, her husband was standing close to Dr Corver who received the collection pot containing the sample from the swabbing attendant, thereafter her husband remained in close proximity to Dr Corver as he poured the contents of the collection pot into the sample containers.

She submits that due to the concentration of Efexor in his system, her husband contaminated the sample, due to one or more of his hairs or his saliva or from a drop or droplets of his perspiration inadvertently falling into the collection pot.

In support of her explanation she also relies on the opinion of Dr Collins, a forensic pathologist who in his reports supported the view that post-race contamination was a highly likely explanation in the way described by Mrs Hunter's husband because the parent drug was not found in the analysed sample, further he had no evidence before him to suggest that the parent drug ODV could be transferred by a human to a horse.

Mrs Hunter also relies on the opinion of Dr Thompson a Consultant Psychiatrist who treats Mr Ian Hunter. Dr Thompson thought it highly improbable that Mr Hunter could have inadvertently introduced by physical contact, sufficient amounts of excreted VLF and its metabolites to the horse to produce a positive in a urine sample.

Rather, he thought it probable that the sample was contaminated at the point of collection by droplets of sweat or saliva.

## **The Stewards' Response**

The stewards rely on the evidence of Dr Corver and the opinions of Dr Stewart, Mr Paul Zahra, a scientist employed by Racing Analytical Services Limited (**RASL**) and also from Dr Lew a highly qualified Pharmacologist.

## **The Evidence**

The evidence in relation to what actually occurred in the sampling process comes from Dr Corver and Mr Ian Hunter.

Dr Corver had no recollection of the taking of the sample on the day in question which is not surprising. He gave evidence based on his usual practice in thousands of cases and in particular he said that he was very familiar with the sampling facilities at Geelong racecourse.

Mr Ian Hunter gave evidence how he stood close to and to the right of Dr Corver and a little back from him as the latter was handed the collection pot. He then described how he resumed his position to the right of Dr Corver as the two of them stood facing the bench upon which stood the three (3) containers.

He said that Dr Corver poured the urine sample from the collection pot directly into the sample containers.

He said that at that point the sample containers were situated in front of and between them.

He said that he had sweated up that morning particularly after leading the horse around after the race. He described the extent of the perspiration by saying that he did not have to wipe his brow it was "just the feel of clamminess."

He also said when Mrs Hunter suggested to him that the collection pot "passed under his nose" that it was not inches from his nose but a normal distance "maybe a foot."

Rather, he agreed that the collection pot was handed to Dr Corver in a similar way to someone passing a plate at a social event.

He said that at no stage whilst he stood near the bench did he lean over. He concluded that the whole exercise was achieved in a normal, flowing movement which did not take more than 30 or 40 seconds.

He agreed that it was not an extremely hot day and did not dispute that the temperature was approximately 17 degrees.

He added towards the end of his oral evidence in cross-examination that saliva could have come from his mouth.

## **Evidence of Contamination**

Mrs Hunter has submitted, in effect, that there were two opportunities for contamination to occur by hair, sweat or saliva.

The first occurred as Dr Corver received the collection pot and the second opportunity occurred when Dr Corver stood at the bench ready to pour the urine sample from the collection pot into the sample containers.

The evidence relating to these propositions is as follows.

When Dr Corver received the collection pot from the swabbing attendant Mr Hunter was standing close to Dr Corver's right side but a step back from him. Mr Hunter did not dispute that Dr Corver, who was dominantly right handed, received the actual pot end with his left hand and the pot handle with his right hand.

Thereafter Mr Hunter adopted a close side-by-side position to Dr Corver as he, Corver, holding the collection pot moved to his left to a position in front of the bench.

At the moment Dr Corver was preparing to pour and did pour the collected urine into the sample containers which were on the bench, Mr Hunter said that the sample containers were situated between the two of them but agreed that he was not leaning over.

There is no evidence which suggests that Dr Corver changed his grip on the collection pot in any significant way prior to pouring which means that the actual pot end was on the away side of Mr Hunter. Dr Corver's evidence on this aspect was that the sample containers were directly in front on him which is consistent with how he held the collection pot.

Further, it would be reasonable to infer in support of Dr Corver's evidence on this issue that when the pouring was about to take place Dr Corver would have the sample containers immediately in front of him rather than on an angle to his right as Mr Hunter would have it.

In this context the Board notes Dr Stewart's comment that care had to be taken to avoid unnecessary spillage.

On this evidence alone it would be stretching the imagination to conclude that it was possible for a hair, saliva or sweat to fall into the collection pot.

In support of her claim that the probable explanation for the positive was contamination due to hair, sweat or saliva, Mrs Hunter also relied on the evidence of Dr Collins a forensic pathologist and Dr Thompson, Mr Hunter's treating psychiatrist.

Both experts were asked by the Hunters to consider that the likely cause of contamination was due to Mr Hunter's hair, sweat or saliva, although as it turned out hair being the cause of contamination was not seriously considered by any of the experts.

Dr Thompson was of the opinion that "it is highly improbable that Mr Hunter could have inadvertently transferred sufficient amounts of excreted VLF and its metabolites to *Nippa Bleu* and it then be internalised and for it then to be detectable in a urine sample. He believed that "a much more probable explanation was that the sample has been contaminated...by droplets of either saliva or sweat."

Dr Collins also thought that post-race contamination was highly likely because of the absence of VLF, the parent drug in the urine sample and the absence of any literature supporting the view that human to equine transfer of VLF or any of its metabolites may occur.

The stewards relied on the opinions of three experts.

Dr Stewart, a highly qualified veterinarian, Dr Lew a highly qualified pharmacologist and Mr Zahra, a well qualified scientist.

Based on his own considerable experience, on the evidence of Mr Hunter and accepting the opinion of Dr Lew and Mr Zahra, Dr Stewart said that contamination by Mr Hunter's saliva or sweat was "impossible."

Dr Lew and Mr Zahra reached agreement as to the estimated quantity of sweat or saliva which would be required to return a positive by different methodology. After allowing for measurement of uncertainty they were satisfied that anything between 12 and 24 droplets of sweat or saliva would be required to support the contamination claim.

Dr Collins did not criticise the calculations made by Mr Zahra and Dr Lew. Dr Collins did however contend that the assumptions made by Zahra and Lew, underlying those calculations were subject to uncertainty and that the conclusions of Zahra and Lew might therefore be questioned. The Board rejects Dr Collins' contention, preferring the opinions of two well qualified experts whose findings were consistent with each other and each of whom, in applying estimated ranges in their methodologies, consistently erred to the extreme of the relevant range most favourable to Mrs Hunter.

Apart from this issue the Board prefers the opinions of the stewards' experts in relation to the matters in contention as stated in the reports of Dr Collins and Dr Thompson. For example, Dr Collins did not have the information contained in the Canadian study referred to in the evidence of Dr Stewart and Mr Zahra.

## **Conclusion**

Upon consideration of the lay evidence and the evidence of the experts, the Board has little difficulty in being comfortably satisfied that Mrs Hunter's explanation should be rejected.

Indeed, the Board finds that the explanation is so implausible as to be fanciful.

The Board therefore finds the charge proved.