TASMANIAN RACING APPEAL BOARD

APPEAL NO 5 OF 2015/16

Panel:	**Mrs Kate Brown (Chair)** **Mr Graham Elliott** **Dr Sue Martin**	**Appellant:**	**Mr Paul Hill**
Appearances:	**The appellant in person** **Mr Dominic Tyson on behalf of the stewards**	**Rules:**	**Thoroughbred Rule178**
Heard at:	**Launceston**	**Penalty:**	**A fine of $2,500**
Date:	**20 November 2015**	**Result:**	**Dismissed**

REASONS FOR DECISION

1. The appellant is a thoroughbred trainer. He presented a horse, *Chelsarli*, to race in Race 2 at the Devonport Racing Club meeting held on 2 August 2015. A pre-race urine sample had been taken from the horse. Analysis of the pre-race blood sample was found to contain Oripavine, which is a prohibited substance under the Australian Rules of Thoroughbred Racing.

2. Following a stewards' inquiry held on 9 October 2015, the appellant was charged pursuant to AR178 which provides as follows:

   "*Subject to AR178G, 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 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.*"

3. The particulars of the charge were:

   ".....you as the trainer of CHELSARLI, which competed in the Birdcage Tavern 3YO and up Maiden Plate over 1000 metres at the Devonport Racing Club meeting on the 2nd of the 8th 2015, when a pre-race urine sample was taken from that horse when it was presented to race it was found to have a prohibited substance in its system, namely Oripavine."

4. The appellant pleaded guilty to the charge.

5. In handing down penalty at the inquiry the stewards stated that:

   "....after considering all the evidence and your submissions on penalty, your guilty plea, your forthright and what we believe is honest evidence during the inquiry we do believe a penalty should be imposed and that be of a fine and also to be consistent with contemporary decisions of this nature we do believe a fine of two and half thousand dollars is appropriate for the offence...."

6. The appellant is appealing against the severity of that penalty.

Background

7. Oripavine is a prohibited substance. There was evidence in the inquiry that it was an opiate alkaloid, which would normally have an analgesic effect, although it was difficult to determine exactly, as there had not been any administration trials done on horses for Oripavine. The expert evidence from Paul Zahra (the Scientific Manager at Racing Analytical Services in Victoria) and Mark Jarrett (the Manager of Analytical Services at the Racing Science Centre in

Brisbane) was to the effect that although Oripavine is a prohibited substance, there is no statutory threshold level to test for. Mr Jarrett's evidence was to the effect that the sample V336402 he tested indicated a level of "around 76 nanograms per mil". Mr Zahra indicated that the level was "approximately 100 nanograms per mil". The importance of that was that it was a measureable and reliable sample, but not significantly high. Mr Zahra gave further evidence that when they detected Oripavine they retested for "other alkaloids that are usually associated with a poppy straw or poppies". He conceded that the result of that retesting indicated that it was a possibility that the source of the Oripavine was contamination from an alkaloid crop.

8. During the inquiry, the appellant could not explain how Oripavine came to be in *Chelsarli's* system. He put forward the view that it could possibly have been feed contamination.

9. It was accepted by the Stewards and by this Board on appeal that it was more likely than not that the presence of Oripavine was as a result of contaminated feed, and there was no suggestion that the appellant had deliberately administered any substance.

10. It was also accepted by all the parties that Mr Hill had been requested to take over the training of *Chelsarli* by the owner only shortly before the sample was taken; that he had collected the horse from another trainer's stables on Tuesday the 28th of July, and it had already been nominated to race on Saturday the 2nd of August at Devonport. Mr Hill's evidence was that he knew that trainer to be overseas, and he also knew the person that those stables were being run by in the trainer's absence.

11. On or about the 30th of July 2015 the appellant rang the Office of Racing Integrity to enquire about having a voluntary swab taken. He was told about the process for that, but particularly was told that the results would not be back before the race on the 2nd of July. He accepted that he was told that he should "proceed as normal" unless he had any concerns.

12. Mr Hill's evidence was that he had no concerns, so he presented the horse to race. However, it seems clear that he was prompted by something to enquire about voluntary swabbing and he accepted that he was aware at that time that a swab taken from a horse in the care of *Chelsarli's* previous trainer had returned a positive swab but he asserted that because that trainer had been overseas for some time and there was no indicator that *Chelsarli* had been administered with any prohibited substance, that he was not concerned. This is an important factor.

13. The appellant pleaded guilty at the inquiry and stewards accepted that at all times his evidence was honest.

14. At the inquiry stewards took into account the following matters when determining penalty:

- He has been involved in the industry for 25 years;
- He has been a trainer for the last eight to nine years;
- Training is his sole income;
- He has eight horses currently in work;
- His financial circumstances included that he had a mortgage;
- A fine would be preferable to a disqualification;
- His cooperation and forthright evidence both before and during the inquiry;
- That he has not had any previous prohibited substance offences;
- The need to hand down a penalty that is consistent with contemporary decisions of this nature.

15. Following consideration of these matters, stewards imposed a fine of $2,500.

The appeal

16. During the hearing of this appeal the appellant argued that the fine of $2,500 imposed was excessive in the circumstances. Reference was made to other recent similar cases including Graham McCulloch who was fined $1,500 wholly suspended for 12 months and John Blacker who received three fines of $2,500 but two were wholly suspended for 12 months.

17. The Board was referred to a number of other stewards' decisions, including Worbey (21 December 2013) in which a horse tested positive for morphine and it was accepted that feed contamination was the likely source. In that case a $5,000 fine was imposed. The case of John Blacker was referred to by both parties. The facts in that case, save and except for the fact that the horse was Oripavine positive, probably due to inadvertent poppy contamination, were largely distinguishable. Mr Hill sought to rely on the fact that Mr Blacker had a previous charge for a prohibited substance, however, it was noted by steward that was approximately 20 years ago. The case of Mr McCulloch was also referred to. The circumstances of the offending were distinguished by stewards on the basis that the horse in that case was not presented to race, rather at a trial track, although they conceded that Mr McCulloch had a relevant prior matter.

18. Mr Tyson, on behalf of stewards, submitted that the matters taken into account by stewards in arriving at penalty were appropriate. He submitted that there were several material differences in the circumstances of the penalties in McCulloch and Blacker.

Decision

19. By majority the Board was not persuaded that the penalty imposed in these circumstances was manifestly excessive. Stewards fairly took into account all relevant factors that were put to them regarding the appellant's personal circumstances and the impact of a fine. There was no specific error detected in their reasons for imposing the penalty that they did. The Board considered that that the penalty imposed indicated an appropriate balance of the circumstances of the offence, the circumstances of the offender and the need for both specific and general deterrence. The imposition of penalties is not formulaic but involves a consideration of all the factors in each particular case.

20. While the penalty in this case was not at the bottom of the range of that which could have been imposed, it was towards the bottom of that range. It is important to note that while the appellant has a clean record, he took on a risk in presenting a horse to race that had only been under his control for a few days. It is clear that he averted to that risk as demonstrated by his call to the Office of Racing Integrity on the 30th of July 2015. He was not disqualified or suspended and there was no evidence that a fine would have been an undue hardship due to his financial situation. The Board, and stewards, must balance the seriousness of the offence and the importance of the underlying policy of drug free racing with justice to the appellant.

21. The appeal against penalty is dismissed. In accordance with s.34(1A) of the *Racing Regulation Act 2004*, 50% of the appellant's prescribed deposit is to be forfeited to the Secretary of the Department. The appellant is also ordered to pay 50% of the cost incurred in the preparation of the transcript in accordance with s.34(4A).