

**RACING APPEALS TRIBUNAL
QUEENSLAND**

NOTICE OF DECISION

APPEAL NOS: RT005-08, 006-08 and 007-08

DATE: 20 May 2008

APPELLANT: Jonathan Kenneth Collins

RESPONDENT: Queensland Racing

APPEARANCES: Mr JE Murdoch SC of counsel, instructed by
Mr Garrett, Solicitor on behalf of the Appellant, and
Mr M Torpey, Steward on behalf of the Respondent.

REASONS FOR JUDGMENT

Mr Brockwell Miller - Deputy Chairman

Mr Dennis Standfield - Member

Mr Jonathan Collins appeals from decisions made by the Stewards of Queensland Racing made in respect to charges levelled against him in that he did present horses for racing when those horses subsequently tested positive to a drug which had more recently been the subject of media advertising and notifications to trainers and others by Queensland Racing.

The issues relevant to the charges levelled against Mr Collins are thoroughly canvassed in the transcript and in the evidence. Suffice to say that as a trainer he presented three horses to race when those horses tested positive to HPC. HPC is a

drug more recently identified as being one for whose presence would be tested by Stewards throughout Australia. At the relevant time, Mr Collins had been a Victorian trainer who had in 2007 brought a number of horses to Queensland and with the onset of the Equine Influenza Virus, it became impossible for him to return to Victoria until the virus had been effectively eradicated in Australia.

There were a number of issues that were raised throughout the course of the Stewards' enquiry and this Appeal identifies the basis upon which it could be said that Mr Collins should have been aware that Stewards were testing for the presence of HPC. It is, in our opinion, irrelevant to canvass those issues because even Mr Collins acknowledges that he was informed by his vet, Dr Doherty, that there were testing procedures being undertaken. While he accepted the Analyst's findings and pleaded guilty, he says he believed that he had ceased administration of the drug in question once informed of that issue and of course in failing to comply on the first instance he was visited with the penalty of a \$3,000.00 fine on each issue.

The same three horses were then the subject of further testing after they competed in races on 23 February 2008. In the week prior to those horses being presented, Mr Collins alleges that he made enquiries of a number of veterinary surgeons throughout Australia as to the withholding period for the drug in question as he had not administered the drug for a period of at least three weeks prior to when they were due to race. The information that he was provided persuaded him that he was not likely to suffer the consequence of a positive test, however in an attempt to ensure

that his view was correct, he contacted the Stewards from Queensland Racing to identify whether they would conduct *elective testing* of the horses to ensure that those horses were free from the banned substance. He gave evidence that he was instructed to place that request in writing to the Stewards and he alleges that he did so but that he was informed by the Deputy Chief Steward that elective testing was not available in circumstances such as this. Indeed he stated that he even contacted Sydney and Melbourne for elective testing as he understood they were advertising for trainers but it could not be done there because the horses were in Brisbane. It is suggested that elective testing was available only where horses may have been the subject of change in training regime or the trainers themselves. It occurs to this Tribunal that had elective testing been conducted, there would have been sufficient time for each of the horses in question to have been scratched from their engagements with no likelihood of any further penalty being imposed.

Mr Torpey identifies, on behalf of the Stewards, that Mr Collins simply took the risk upon himself and in effect flouted the Rules of Racing when he had already been warned by the Chief Steward, Mr Sanders, that he should take extreme care in having the horses entered to race without being certain that the drug had not been removed from their system. That is without doubt a very telling issue for this Tribunal to consider. It should be said that after the horses tested positive, a penalty of three months disqualification on each charge was imposed with the charges to be served cumulatively.

During the course of the Appeal, Mr Torpey tendered an article noted *Integrity Operations News* by Reid Sanders, Chief Steward of Queensland which appeared in the Queensland Racing Magazine in September 2007. It is unnecessary to repeat verbatim all of what Mr Sanders said in the press release, however the following is of some importance:-

Elective testing will be made available to trainers who may have previously used hydroxyl progesterone caproate in order to avoid the likelihood of positive race day samples. For advice on elective testing please contact Queensland Racing's Chief Steward, Mr Reid Sanders.

Such a statement presupposes that if a horse had been treated with the drug in question, then elective testing procedures would have been made available.

Mr Collins sought to avail himself of those elective procedures but was refused permission. Of course, it was open to Mr Collins to arrange his own testing but one wonders whether that was viable in the circumstances where the Stewards of Queensland Racing were already aware that the horses in question had been the subject of a previous positive finding. Had the horses been tested, then they would not have been allowed to start and no penalty would have been imposed.

Mr Murdoch for the Appellant suggests that this Tribunal should view the matter of penalty under the Totality Principle. He referred the Tribunal to the High Court decision of *Mill and The Queen* and opined that it was appropriate for the Stewards

Panel to have looked at the totality of all of the sentences and then acknowledged that they all stemmed from the one incident. In doing so he considers that the Tribunal should seriously consider acknowledging that the first penalty of a \$3,000.00 fine in respect to each horse would have been sufficient in all the circumstances and that no further monetary penalty was necessary. Had there been only the one incident, then we may have some confidence in accepting Mr Murdoch's submission, however the circumstances here identify that there are two separate and distinct incidents, the first of which occurred when each of the horses were the subject of a positive test, the findings of which were then conveyed to the trainer/Appellant who, regardless of the issues, then brought it upon himself to enter the horses to compete in subsequent events without his making every effort to determine that he presented those horses drug-free. Mr Collins failed to do so and it is not appropriate or proper for this Tribunal to simply allow a \$3,000.00 fine in each instance to apply. It is the belief of this Tribunal that a period of disqualification is certainly not appropriate but a monetary penalty of a similar amount of \$3,000.00 in each instance relating to the second race for each of the horses be imposed.

In all the circumstances the appeal in respect to the three periods of disqualification is upheld and the penalty imposed thereon is set aside and in lieu thereof a monetary penalty of \$3,000.00 in each instance is imposed.

The Tribunal orders that the deposits be refunded to the Appellant.

Mr Brockwell Miller
Deputy Chairman

Mr Dennis Standfield
Member
