

**SOUTH AUSTRALIAN  
RACING APPEALS TRIBUNAL**

RAT 21/2022

DATE OF HEARING:

THURSDAY 2 February 23

TRIBUNAL:

PRESIDENT: MR TIM ANDERSON, KC

IN ATTENDANCE:

MR JOHAN PETZER, GENERAL MANAGER INTEGRITY, RACING SA LTD

MS FRANCES NELSON KC, REPRESENTING THE APPELLANTS

MR LEON MACDONALD AND MR ANDREW GLUYAS, APPELLANTS

IN THE MATTER of an Appeal by **MR LEON MACDONALD** and **MR ANDREW GLUYAS** against a decision of Racing SA Ltd Stewards.

BREACH OF RULE: AR 240(2)

*Subject to subrule (3), if a horse is brought to a racecourse for the purpose of participating in a race and a prohibited substance on Prohibited List A and/or Prohibited List B is detected in a sample taken from the horse prior to or following its running in any race, the trainer and any other person who was in charge of the horse at any relevant time breaches these Australian Rules.*

PENALTY: FINE OF \$9,000

**DETERMINATION**

Mr Leon Macdonald and Mr Andrew Gluyas hold a co-trainers licence in South Australia. They trained the horse PIMMS PARTY which ran in race 9 at Morphettville on 30 July 2022.

A post-race blood sample taken from PIMMS PARTY revealed the presence of nicotine and cotinine which are prohibited substances under "Prohibited List B". Cotinine is the main metabolite of nicotine.

They were charged under AR 240(2). The particulars alleged by the Stewards were:

*"you, Mr Leon Macdonald and Mr Andrew Gluyas as the co-trainers of the racehorse PIMM'S PARTY at all relevant times leading up to and including Saturday the 30th of July 2022, did bring the said racehorse to the Morphettville Racecourse where it competed in Race 9 the ZILZIE WINES HANDICAP, run over 1200m after which a blood sample taken from the horse, sample V608018 disclosed upon analysis the substance nicotine and its metabolite cotinine, which substances are prohibited substances under the Rules of Racing, in particular in reference to Schedule 1 Part 2 Prohibited List B."*

Mr Macdonald and Mr Gluyas pleaded guilty. There was speculation as to how the substance could have made its way into the horses system but that speculation does not assist in this appeal.

This is a strict liability offence. The fact is that the horse was brought to the racecourse for the purpose of participating in a race and a prohibited substance was detected.

Ms E. F. Nelson KC appeared for the trainers before the Tribunal. Ms Nelson advised that the appeal was only related to the severity of the penalty.

After considering the relevant factors, the Stewards imposed a monetary penalty of \$9,000. They reached this penalty by starting at a penalty of \$12,000 and reducing it to \$9,000 for the guilty plea and for the co-operation and record of the trainers.

Ms Nelson submitted that the penalty was excessive and that not sufficient weight was given to the good record of the trainers and the early guilty plea and the co-operation of the trainers.

Ms Nelson further submitted that too much emphasis had been given to the aspect of general deterrence given that the detection of nicotine in horses was virtually unknown in the equine industry. That made it an unusual case, she submitted. Further, Ms Nelson submitted that because there was no knowledge in the industry regarding nicotine, no warnings had been given of the possibility of contamination.

Mr Petzer, on behalf of the Stewards emphasised that it was a strict liability offence. The speculation as to the cause was mere conjecture, he submitted, without any hard evidence. Mr Petzer maintained that the penalty was not excessive and referred to several "substance" decisions in support.

Whilst these other decisions form some broad guide, they cannot of themselves be regarded as either binding or persuasive precedents. Each matter must be dealt with on the proven facts in each case.

Mr Petzer emphasised the protection of the integrity and image of racing. He submitted that the fine was within a reasonable range of penalties.

A breach of this rule is regarded as serious. In the circumstances however, a fine, rather than a disqualification or suspension was appropriate. These two trainers have been in the industry most of their lives and have good records. The knowledge of nicotine ingested in horses is sparse. This places less importance on general deterrence.

It is my view that the starting point in this matter for all those reasons, should have been \$8,000 and for the reasons stated I would then reduce that to a figure of \$4,000.

I therefore allow the appeal, substitute a penalty of \$4,000 and order the repayment of the applicable portion of the bond lodged with the appeal.