

## **APPEAL PANEL OF RACING NEW SOUTH WALES**

### **APPEAL OF LICENSED TRAINER MR GREGORY HICKMAN**

Appeal Panel: **Mr R. Beasley SC, Principal Member; Mr C. Tuck; Mr J. Rouse**

Appearances: **Appellant: Mr Daniel McKinnon, Solicitor**  
**Racing New South Wales: Mr Marc Van Gestel, Chairman of Stewards**

### **REASONS FOR DECISION – 8 July 2021**

#### **The Panel**

#### **Introduction**

1. A blood sample was taken from the racehorse *Tudor Music* prior to that horse running in the PJ Bell Stakes at the Randwick Racecourse on 10 April 2021. Tudor Music is trained by the Appellant in this Appeal, Mr G. Hickman. The horse finished 15<sup>th</sup> in the race.
2. Evidence from accredited laboratories that analysed the blood samples confirmed that the prohibited substance flunixin was in the horse's system prior to the race.
3. Evidence given at a Stewards' Inquiry conducted on 1 June 2021 confirmed that flunixin is a prohibited substance. It is registered, and is generally given to horses intramuscularly as an anti-inflammatory.
4. The expert evidence at the Stewards' Inquiry was also that the horse had a level of flunixin in its system of approximately 2.5ng/mL. There was evidence that this would be consistent with an administration to a horse about 24 hours prior to the blood sample being taken.
5. However, on the totality of the evidence, whilst it is not known with certainty how the flunixin came to be in Tudor Music's system, the Stewards (as evidenced in their

report of 1 June 2021) “accepted the most likely cause was due to stable contamination from another horse that was being treated with flunixin”. No doubt this view was to a significant degree based on the evidence of Racing NSW’s General Manager of Veterinary Services (Dr T Koenig), who confirmed at the Stewards’ Inquiry that the potential for contamination with the use of flunixin is “widely known”.

6. The Stewards’ analysis of the likely cause of the positive swab here was based on evidence given at their inquiry by both the Appellant and his wife that one of their other horses (*Insider Trader*) had been administered with flunixin on 26 and 29 March 2021 (10ml and 5 ml respectively). It is possible then (and seems the most likely explanation) that Tudor Music returned a positive sample by coming into contact, over the following days, with flunixin that may have been excreted in Insider Trader’s urine, or through some other cross-contamination process.
7. As a result of the above matters, the Appellant was charged with a breach of AR240(2) which is in the following terms:

**“AR240 Prohibited substance in sample taken from horse at race meeting**

...

(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 in any other person who is in charge of the horse at any relevant time breaches these Australian Rules.”

8. There being no doubt that flunixin was a prohibited substance, and there being no challenge to the laboratory analysis, the Appellant pleaded guilty to the breach of the rule. He was penalised by being fined the sum of \$6,000. He has appealed against this penalty to the Panel.

## **Appeal**

9. The Appellant was represented on appeal by Mr Daniel McKinnon, solicitor. The Stewards were represented by Mr Marc Van Gestel, the Chairman of Stewards.
10. An Appeal Book, containing the evidence of the Stewards Inquiry, was admitted into evidence on the appeal and marked as Exhibit A, while the exhibits from the Stewards' Inquiry retained the number they were given at that inquiry.
11. No oral evidence was called on the appeal. However, Mr McKinnon tendered a photograph of a sign that has now been installed at the Appellant's stables regarding administration of flunixin to ensure that such a cross-contamination event does not occur again. Mr McKinnon also showed to the Panel a diagram as to how the Appellant has now re-arranged his stable such that horses being administered medications are kept away from other horses in his stables.
12. Also tendered on the appeal by Mr Van Gestel was a series of extracts from the Racing NSW magazine, dating back some four years (but being republished continuously) containing warnings from the Chairman of Stewards to trainers about the risks of cross-contamination from flunixin, and setting out protocols that trainers should adopt so that what occurred in this case does not occur.

## **Submissions**

### ***Mr Van Gestel***

13. While accepting that the most likely cause of the positive sample from Tudor Music in this case was what can be described as an innocent cross-contamination, Mr Van Gestel first submitted that clearly the breach of the presentation rule here had occurred because the Appellant had adopted what can be described as less than best practice with respect to the administration of flunixin to the horse Insider Trader.

14. Mr Van Gestel also submitted that it was obvious that the Appellant was not having regard to the warnings posted by him in the Racing NSW magazine which are designed to assist trainers in preventing breaches of AR240(2).
15. Finally, Mr Van Gestel, who provided the Panel with a list of relevant precedent penalties, submitted that the penalty imposed of a fine in the sum of \$6,000 was entirely consistent with prior breaches of this rule, and noted that the Appellant had previously been fined \$5,000 for a breach of the same rule back in February 2019.

***Mr McKinnon***

16. Mr McKinnon first emphasised that the Panel should accept that what occurred here was in the manner suggested by the Stewards – that is, the positive sample from Tudor Music most likely resulted from a cross-contamination from Insider Trader being treated with flunixin twice about two weeks before.
17. Secondly, whilst conceding that the Appellant had failed to adopt best practice in relation to safety procedures to ensure that cross-contamination from the administration of flunixin did not occur, Mr McKinnon submitted that the Panel should give considerable credit (which should be reflected in penalty) to the Appellant for the procedures that have been adopted by his stable since this incident occurred. He submitted that they now represent best practice by a trainer to ensure that cross-contamination of a medication containing a prohibited substance will not occur, including what appears to be a readily transmissible substance like flunixin.

**Resolution**

18. The Panel accepts the submission of Mr Van Gestel that the procedures now adopted by the Appellant should have been in place before Tudor Music returned the positive sample it did following the race meeting conducted on 10 April 2021 at Randwick. We also accept that it is always a seriously bad look for racing when a horse tests positive to a prohibited substance. Although Tudor Music ran 15<sup>th</sup> in the race in question, there is some aggravation from the fact that the positive sample occurred at a prominent race meeting at Randwick.

19. However, the Panel does take the view that the appropriate steps that have now been taken by the Appellant to ensure that such a breach of the rule does not happen again should be reflected to some degree in the penalty that is imposed upon him for this breach. The Panel feels confident that the Appellant has taken the steps he should in relation to this incident with Tudor Music, and that he will from this point on diligently read and consider warnings given by the Chairman of Stewards in the Racing NSW magazine, and adhere to the recommendations made.
  
20. While the penalty imposed by the Stewards of the fine of \$6,000 is by no means inappropriate (it is in an entirely appropriate range for the offending here), we are of the view that a more appropriate penalty is a fine in the sum of \$3,000.
  
21. The orders of the Panel are as follows:
  - (1) Appeal allowed.
  
  - (2) In lieu of a fine in the sum of \$6,000, the Appellant is fined the sum of \$3,000.
  
  - (3) Appeal deposit to be refunded.