

Tasracing Integrity Unit

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STEWARDS DECISION

TASRACING

and

GRAEME McCULLOCH

Date of Decision: 2nd April 2025

Stewards Panel: Mr M Castillo (Chair), Mr N Finnigan and Ms E Morice-Smith

Respondent: Mr Graeme McCulloch

Rule: Australian Rule of Racing 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

Charge: Mr Graeme McCulloch, the trainer of FIESTY LION presented that horse to compete in Race 4 at the Devonport Racing Club's meeting on the Friday 8th December 2023, when a post-race urine sample taken from the gelding revealed the presence of a prohibited substance, namely, ARSENIC.

Plea: Reserved

1. Background

- (a) The respondent, Graeme McCulloch, holds a trainer A license under the Australian Rules of Racing.
- (b) Mr McCulloch is 73 years of age and has held a trainer's licence for a period of over 50 years.
- (c) FIESTY LION was correctly entered for and presented to race in Race 4 at the Devonport Racing Club's meeting on the 8th December 2023.
- (d) FIESTY LION placed 2nd in the event earning \$5000 in stake money.
- (e) FIESTY LION was subjected to post-race swabbing where a urine sample was taken. The procedure was witnessed by Office of Racing Integrity Steward Ms M Robinson. Ms Brooke Smithers witnessed the sampling process. The sampling process was not contested.
- (f) The collection of the sample was concluded at 4:40pm with the sample being allocated the unique number V793312.
- (g) On the 3rd January 2024, Racing Analytical Services Limited (RASL) issued a Certificate of Analysis reporting that the prohibited substance ARSENIC had been detected in sample V793312 taken from FIESTY LION on the 8th December 2023.
- (h) RASL advised the reserve portion of the sample had been forwarded to the Racing Chemistry Laboratory in Western Australia for referee analysis.
- (i) The outcome of the reserve sample was provided by the Racing Chemistry Laboratory on the 16th January 2024. The Report confirmed ARSENIC was detected in sample V793312.
- (j) Samples of wood chips taken from Mr McCulloch's stables confirmed the presence of ARSENIC.

2. Submissions of the Respondent

- 2.1 Mr McCulloch submitted that due to some varying factors he had been denied both Natural Justice and Procedural Fairness, in particular Mr McCulloch claimed the following:
 - 2.1.1 No signature on Sample Identity Document by Swabbing Steward, Ms Margaret Robinson.

- 2.1.2 The length of time between the race in question and the inquiry into the findings.
- 2.1.3 Late notification of the referee sample findings.
- 2.1.4 No documentation re clearance sample.
- 2.1.5 FIESTY LION had been stood down under the wrong rule.
- 2.2 Mr McCulloch stated that he was unaware that FIESTY LION had ingested treated posts, but claimed this could be the only possible source of Arsenic finding.

3. Penalty Considerations

3.1 Principles –

- 3.1.1 Penalties are designed to punish the offender for their wrongdoing. Penalties are not meant to be retributive in the sense that the punishment is disproportionate to the offence, but nonetheless, the offender must be met with a punishment.
- 3.1.2 Penalties imposed upon those offending the prohibited substance rules should reflect the industry's disapproval of drugs being detected in horses.

3.2 Stewards Approach

- 3.2.1 The Stewards have resolved to approach the matter of penalty from the perspective of the desirability of consistency with previous penalties in dealing with similar offenders committing similar offences in similar circumstances.
- 3.2.2 We are guided in our approach to penalty by those imposed, not only in Tasmania, but also within other Australian jurisdictions.
- 3.2.3 With respect to this matter, Stewards have adopted \$2000 fine as a starting point. This being consistent with penalties handed down for similar breaches Australia wide.
- 3.2.4 With all cases, even though they may on the surface seem similar, they all need to be assessed on an individual basis with the consideration of all circumstances.

4. Respondents Penalty Submissions

- 4.1 Mr McCulloch submitted that on considering penalty, Stewards should consider his honesty and cooperation when dealing with the matter.
- 4.2 Mr McCulloch submitted that his involvement in Racing as a trainer is long, and his only blemish is historical where a stable hand had erred in the method of treatment of one of his horses.
- 4.3 Mr McCulloch submitted that the findings were brought about by the ingesting of treated timber, which at the time, he was unaware was happening.

5. Penalty Discussion:

- 5.1 The Prohibited Substance Rules impose an absolute obligation on trainers to ensure that they present their runners free of prohibited substances.
- 5.2 In consequence, trainers must take all reasonable steps, and must take proper care, always, to avoid presenting a horse which could give rise to an adverse test result.
- 5.3 Resultantly, where there is a breach of the drug rules, trainers must expect substantial penalties, because every time a racing animal is presented to race with a prohibitive substance in its metabolism, then the integrity of racing in general is compromised.
- 5.4 In this matter we approach the imposition of penalty on the basis that the cause of the findings was not intentional. However, the onus under AR 240(2) is on the trainer to present a horse free of any prohibited substance, the rule is absolute. Hence the respondents' acknowledgement of the breach.
- 5.5 In fixing penalty, we have regard to the need to uphold the integrity of racing. Penalty precedents have long been at the forefront of disciplinary decision-making, albeit with each case being decided on its own merits. It is wrong to suggest otherwise. Accordingly, the penalty that is imposed upon the respondent must be at a level that protects the public by encouraging the highest of standards of professional behaviour and that the respondent is dealt in a fair and just manner.

6. Factors in consideration of penalty.

In determining the appropriate penalty, the Stewards recognise the following factors:

- 6.1 Mr McCulloch has acknowledgment to the presenting of FIESTY LION to race with the prohibited substance ARSENIC in its system.
- 6.2 Stewards believe it to be most probable that Mr McCulloch did not intentionally present FIESTY LION to race with the prohibited substance ARSENIC in its system.
- 6.3 However, every time a horse is presented to race with a prohibitive substance in its metabolism then the integrity of racing in general, is compromised.
- 6.4 The Stewards have identified no aggravating factors which would necessitate an increase from the starting point, however, equally, no reduction from the starting point was given either.

7. Outcome

Mr McCulloch is to be fined pursuant to the Australian Rules of Harness Racing. The particulars of the fine being that one of \$2000.

8. Disqualification Of Horse

It is mandatory under the Australian Rules of Racing that if a horse competes in a race and is found to have competed with a prohibited substance in its system, that it must be disqualified from that race.

AR 240 (1) reads

Subject to subrule (3), if a horse is brought to a racecourse 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, horse must be disqualified from any race in which it started on the day.

As a consequence, the placings for Race 4 at the Devonport Racing Club's meeting on the 8th December 2023 are to be adjusted to reflect the disqualification of FIESTY LION.

Decision Date: 2nd April 2025