

**Non Raceday Inquiry RIU v R & J Vance - Reserved Decision dated 30 March 2021 - Chair, Mr P Wicks QC**

**Rules:**

**Repondent(s)/Other parties:**

**Name(s):**

**Decisions:**

**BEFORE A JUDICIAL COMMITTEE OF**

**THE JUDICIAL CONTROL AUTHORITY**

**UNDER THE RACING ACT 2003**

**AND IN THE MATTER of the New Zealand Rules of Thoroughbred Racing**

**BETWEEN RACING INTEGRITY UNIT (RIU)**

**Informant**

**AND MR ROBERT AND**

**MRS JENNY VANCE**

Licensed Trainers

**Respondents**

**Information:** A8491

**Judicial Committee:** P Wicks QC, Chairman

B Scott, Member

**Appearing:** Mr O Westerlund, Racing Investigator, for the Informant

The Respondents in person

**Date of hearing:** 25 March 2021

**RESERVED DECISION OF JUDICIAL COMMITTEE DATED 30 MARCH 2021**

**Background**

1. On Wednesday 4 November 2020, the Avondale Jockey Club held a meeting at Avondale Racecourse.
2. The horse "Forgetz" presented and raced in Race 5 a Maiden 1400M RACE. During the running "Forgetz" faltered near the 700 metres and was quickly pulled up. It was immediately attended to by the on-duty Veterinarian and was humanely euthanized after being found to have suffered a significant leg injury.
3. An investigation into the matter was duly commenced and blood samples taken from the horse.
4. The sampling resulted in confirmation that the horse was found to have present in its metabolism a prohibited substance namely Caffeine.
5. The Respondents have as a result been charged under Rule 804(2) of the Rules of New Zealand Thoroughbred Racing ("the Rules").
6. The Respondents have admitted that charge and therefore become subject to the penalty or penalties which may be imposed under Rule 804(7) of the Rules.

**The Charge**

7. The charge alleges the Respondents presented the horse Forgetz to race on 4 November 2020 with a prohibited substance in its system namely Caffeine.
8. Information Number A8491 sets out particulars of the charge and this was served on the Respondents on 26 February 2021.

9. The particulars of the charge is that:

"That on Wednesday the 4th of November 2020 at Avondale being the registered Trainers for the time being in charge of the horse "Forgetz - the 6 year old bay gelding by Remind – Ms Tiz – which was brought to the Avondale Jockey Club meeting for the purpose of engaging in and did engage in race 5 – AJC.CO.NZ Maiden SW1400 when the said horse was found to have present in its metabolism a prohibited substance, namely Caffeine, which is in breach of the New Zealand Thoroughbred Racing Rule 804(2) and is therefore subject to the penalty or the penalties which may be imposed pursuant to Rule 804(7) of the said Rules.

10. Rule 804(2) creates an offence where a horse is brought to the racecourse having present in its metabolism a prohibited substance.

11. The penalty provisions are detailed in Rule 804(7) and penalty options available include:

(a) Disqualification for a period not exceeding 5 years; and/or

(b) Suspension from holding or obtaining a licence for a period not exceeding 12 months; and/or

(c) A fine not exceeding \$25,000.

### **Guilty Plea**

12. The Respondents have admitted the breach. The charge is therefore proved.

### **Summary of Facts**

13. On 4 November 2020 "Forgetz" presented and raced at the Avondale Jockey Club meeting held at Avondale. "Forgetz" is trained by the Respondents.

14. During the running "Forgetz" faltered near the 700 metres and was quickly pulled up. It was immediately attended to by the on-duty Veterinarian and was humanely euthanized after being found to have suffered a significant leg injury. Neither interference in the running or track conditions contributed to the injury.

15. Four blood samples were then taken by the on-duty Veterinarian and subsequently couriered to the New Zealand Racing Laboratory for analysis.

16. The Official Racing Analyst reported the presence of Caffeine in the blood sample taken from Forgetz.

17. A written report from Dr Andrew Grierson, Chief Veterinarian details the effect of Caffeine as a stimulant.

18. Dr Grierson confirms Caffeine is a prohibited substance under the Prohibited Substance Regulations in the Rules.

19. A Summary of Facts filed on behalf of the Informant confirmed Mr Vance was spoken to on 23 November 2020 at the Respondents' stables at Popes Road, Takanini. He indicated that he had no idea how caffeine had got into the horse's system. He did raise that he has a flask of tea he drinks every day at the stables and that every morning he urinates in the same corner of the two boxes he uses. The horse "Forgetz" was highly likely to be in one of those two boxes prior to attending the Avondale Jockey Club meeting.

20. Eight samples were taken of the sawdust from the two boxes concerned and analysed. A written report issued by NZRLS dated 2 February 2021 confirmed the presence of Caffeine and associated metabolites in the eight sawdust samples taken from the two boxes.

21. There were no irregular betting patterns and the Summary of Facts confirms the probable cause of the presence of caffeine was as a result of contamination arising from Mr Vance urinating in the stable box.

### **The Respondents Response**

22. The Summary of Facts is accepted by the Respondents.

23. Mr Vance at the hearing raised an issue as to adequacy of the amount of blood samples taken and that the Respondents had no opportunity to have a 'B' sample tested. In light of the charge being admitted and this being confirmed by Mr Vance at the hearing this issue raised in the hearing is not relevant to our decision on penalty.

### **Penalty Submissions**

24. Written penalty submissions were received and then advanced in oral submissions at the hearing on behalf of the RIU. The RIU referred to the well-known principles on sentencing and more particularly as they relate to Thoroughbred Racing. They are:

(a) Penalties are designed to punish the offender for his/her wrongdoing. They are not meant to be retributive in the sense the punishment is disproportionate to the offence, but the offender must be met with punishment.

(b) In a racing context it is extremely important that a penalty has the effect of deterring others from committing similar offences.

(c) A penalty should also reflect the disapproval of the JCA for the type of offending in question.

(d) The need to rehabilitate the offender should be taken into account.

25. It is acknowledged by RIU the first 3 principles have relevance. The last is not particularly relevant to the current circumstances.

26. The general principles or considerations of punishment, personal and general deterrence and public confidence in the profession/industry of Racing must be taken into account in the balancing exercise of reaching the appropriate sanction.

27. These were referenced in the decision of an Appeals Tribunal in RIU v Lawson at paragraphs 26-32. It is not necessary to repeat what was said by the Appeals Tribunal. They are detailed in the penalty submissions submitted by RIU.

28. The RIU submits the Respondents are not considered to be habitual offenders or persons of low moral character to the extent they would bring the Thoroughbred Racing Code into disrepute. We agree.

29. The RIU submits as an aggravating feature the fact of an advisory having been given to Licence Holders as to the risks of having people urinate in horse boxes. This was sent by RIU to the relevant Racing Codes on 29 October 2018. RIU also see an aggravating feature of there being an absolute liability in presenting a horse when it is not free of prohibited substances.

30. The RIU also details mitigating factors as being an admission of the breach and the Respondents being fully cooperative throughout the investigation process. They also reference a blemish free record of offending and note the Respondents have been involved in the Thoroughbred Racing Industry all their adult lives.

31. The RIU submissions refer us to the cases of RIU v J & J Dickey, RIU v DJ Simpson & RIU v Goldsack as supporting a fine of \$2000 being imposed. Very recently in RIU v B Wallace and G Cooksley a case involving very similar factual circumstances a fine of \$2000 was imposed.

32. In line with the cases we have been referred to a fine of \$2,000.00 as an appropriate starting point in this instance.

33. The RIU does not seek costs.

34. For the Respondents, Mr Vance set out in oral submissions before us that the horse, Forgetz was owned and trained by the Respondents. The loss of the horse had been particularly upsetting for Mrs Vance. The horse had been in their ownership and stable since it was a yearling and in training for about 4 years. The Respondents operate a small stable and had suffered a significant financial loss as a result of the loss of Forgetz.

35. Mr Vance confirmed that there had previously been no toilet facility at the stables resulting in the use of the box by him to urinate. This had now been rectified.

36. Mr Vance also made the following submissions:

(a) This was not a case where the horse had won the race and been disqualified.

(b) That the adequacy of the blood sampling and that a B sample was not made available for testing can be taken into account in setting the penalty.

(c) A fine of \$2,000 was too high.

37. Taking into account the cases we have been referred to, the appropriate starting point for a fine is \$2,000.

38. We do consider that we can in this particular case take into account the circumstances here being the impact on the Respondents of the loss of a horse owned and trained by them as a result of the significant leg injury the horse suffered in the running. In doing so we reduce the fine that would otherwise be imposed to one of \$1,250.

### **Orders**

We accordingly order:

(a) The training partnership of the Respondents is fined the sum of \$1,250.

(b) Costs are to lie where they fall.

### **Paul Wicks QC**

Chairman

### **Penalty:**