

## Appeal decision

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**Decision Date:** 23 March 2016

**Hearing Date:** 25 August 2015 & 24 November 2015

**Code of racing:** Harness Racing

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**Appeal panel:** Mr B Miller (Chair), Mr P James and Mr D Kays.

**Appearances:** Mr S Neaves, Counsel, appeared on behalf of the appellant  
Mr Donald Smith.  
Mr D Farquharson (Chairman of Steward) appeared on behalf of the Stewards.

**Decision being appealed:** \$5000 fine

**Appeal result:** Appeal dismissed

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The appellant Donald Smith was the trainer of the standard bred "A Good Chance" which competed in Race 8 at Albion Park on Saturday 16 May 2015. It finished third in the three year old Nursery Final for colts and geldings a group 2 event. A pre-race blood sample was collected from the horse and was subsequently analysed by the Racing Science Centre and the blood sample proved positive to a total carbon dioxide concentration of 36 millimoles. The referee sample was analysed by the Australian Racing Forensic Laboratory in Sydney and the examination conducted at that laboratory indicated that the level of TCO<sub>2</sub> was measured at 35.5 millimoles. An Inquiry was undertaken by the stewards of Racing Queensland and after evidence was presented a charge was levelled against the trainer Donald Smith pursuant to Rule 193(3) which stipulates:

*A person shall not administer or allow or cause to be administered any medication to a horse on race day prior to such horse running in a race.*

Sub-section (6) of that Rule stipulates:

*For the purposes of this Rule, medication means any treatment with drugs or other substances.*

The stewards believed that the finding of the level of 36 millimoles was sufficient to justify a charge under the Rule. Ordinarily the use of TCO<sub>2</sub> or the existence of a possible finding thereto is followed by a charge under what can simply be termed the

“presentation rule” which demands that a trainer be penalised should the horse’s level exceed the threshold of 36 millimoles subject all the while to the overriding factor that each test must be considered on its merits and not simply be of 36 millimoles but above that level to allow for a factor of uncertainty which under the Legislation is nominated at 1 millimole on a plus or minus basis. That is not the position in this circumstance.

In support of their contention the stewards referred to various tests that had been conducted upon this same horse over a significant period of time all of which referred to samples taken at or near the time of a race. On each of the preceding four swab samples being recovered the horse’s level of TCO<sub>2</sub> ranged between 28 and 32 millimoles which, in the opinion of the stewards, was regarded as the normal range for a standard bred. Further a non-race day sample taken on 4 June 2015 recovered the horse’s level of TCO<sub>2</sub> of 27.6 millimoles. The existence therefor of a reading significantly higher was the sole basis for the steward’s cause for complaint and for the issue of the charge under Rule 193.

Against that consideration the appellant tendered evidence from a veterinary surgeon Dr Alan McGregor who provided a detailed report on his experiences with the use of bicarbonates in standard bred and other horses. He gave evidence at the appeal by telephone and was specific in his views that it is not merely the presence of alkalinising agents that cause increments in the TCO<sub>2</sub> levels. He considered that feeding regimen, exercise, weather and stress and anxiety played an important role and he pointed to numerous instances where he had noted increases in the levels of TCO<sub>2</sub> over many years. Under cross examination by Mr Farquharson he did accept however that for the horse “A Good Chance” to return a reading of 36 millimoles it would have required more than just those issues to have been present. His view was that somehow or other the horse had been administered some form of alkalinising agent and he pointed to a substance that is known as GB10 which is noted to be a powerful ant-acid and natural source of bio available calcium and magnesium. He placed a great deal of credence in the notification at the bottom of the product label that *this product doesn’t contain any known substances that may contravene any rules of competition or racing.*

Evidence of Dr Young - Racing Science Centre indicated that the only explanation for the elevated race day level reported is a source of alkalinising agents which has found its way into the horse on that day and probably soon after lunch. Further evidence of Dr Young that while the horse’s exercise program and maybe being anxious or dehydrated can slightly elevate a TCO<sub>2</sub> level, it certainly would not explain a 6 millimole elevation and for GB10 to have any effect the quantity needed

to be ingested would be unpalatable. In summary Dr Young stated “ I mean, looking at all of the facts in front of me, I acknowledge what the trainer has said, but looking at all of the facts in front of me, I think this paints a classic picture of a horse that is capable of having a normal level but has been administered alkalising agents on race day. It’s got all of those hallmarks”.

Further evidence by Dr Young indicated that a horse naturally capable of going from 30 to 36 without alkalising agents - 640000 to 1.

That evidence is supported by a 27 November 2015 “Statement of average TC02 concentration in standard bred blood samples submitted to the Racing Science Centre for analysis”. The statement indicated that from 11450 samples, over a 5 year period, the average TC02 level is 31.2 millimoles.

The case for the appellant revolved on a complete lack of knowledge of the circumstances surrounding the elevated level reported, hypothesising that the exercise program, transport, anxiety, dehydration, and ingestion of GB10 may have had some effect, and that private testing to produce a pathology report indicated that the horse returned elevated TCO2 levels. In respect of the pathology report Dr Young explained that pathology reporting is very different to the forensic environment at the Racing Science Centre.

In view of all of the circumstances, the Board is comfortably satisfied that, it is not possible for a horse to return a level of 36 millimoles just by normal feeding and that, contrary to the rules, the horse received an alkalising agent on race day and dismiss the appeal on both conviction and penalty. We consider the penalty to be within the normal range in all of the circumstances.

Further right of appeal information: The Appellant and the Steward may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **28 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at [www.qcat.qld.gov.au](http://www.qcat.qld.gov.au)