



INTERNAL REVIEW DECISION

(Internal Review Decision Notice in response to an Application for Internal Review)

PART 1: Details of Internal Review

Internal Review Number:	Internal Review 0103-18
Applicant's Name:	Leslie Kelly

PART 2: Decision History

Original Decision:	Breach of Rule 175(k) of the Australian Rules of Racing
Original Decision Makers:	I Brown, C Albrecht, G Lane
Date of Original Decision:	5 November 2018
Internal Review Decision:	Original decision of charge confirmed, penalty amended to a \$5,000.00 fine with \$3,000.00 wholly suspended for a period of two (2) years
Internal Adjudicator:	Mr Kane Ashby, Queensland Racing Integrity Commission
Date of Internal Review Decision:	12 December 2018

PART 3: Summary of Internal Review Application

The Applicant, Mr Leslie Kelly licensed trainer of SHE'S A YOUEFFOH which was engaged to race at the Gold Coast Turf Club on 3 October 2018, was found guilty of a charge pursuant to Australian Rule of Racing 175(k).

Australian Rule of Racing 175(k) states:

"The Principal Racing Authority (or the Stewards exercising powers delegated to them) may penalise:

(k) Any person who has committed any breach of the Rules, or whose conduct or negligence has led or could have led to a breach of the Rules."

The specifics of the charge being the Applicant, as a licensed trainer, failed to adequately ensure the supervision of thoroughbreds under his care were not to be administered a medication on raceday prior to racing, being negligence on his behalf, and such negligence could have reasonably led to a licensed stablehand administering a medication to SHE'S A YOUEFFOH on the morning of 3 October 2018, the same day on which SHE'S A YOUEFFOH was engaged to race at the Gold Coast Turf Club. The Applicant entered a plea of not guilty to the charge.

The Applicant submitted that he did not, at any stage, have knowledge of Mr Xanthopoulos' intentions or actions on that day until after the Queensland Racing Integrity Commission's Integrity Investigations Team officials had entered his stables, nor did he direct or request Mr Xanthopoulos to administer the substance on his behalf. The Applicant also submitted that it was difficult for him to have complete oversight of his stables at all times.



In considering the Applicant's submissions, Stewards were concerned that a stablehand and owner would have such unrestricted access to the Applicant's stables and would even consider administering a substance to a horse under his care without his knowledge. Stewards were satisfied that the Applicant's stable practices in all of the circumstances were unsatisfactory and amounted to negligence which could have easily led to SHE'S A YOUEFFOH being administered a substance on raceday, had it not been for the timely attendance of the Integrity Investigations Team officials. Furthermore, it is not a satisfactory defence for a trainer, in those circumstances, to simply say they had no knowledge of what was occurring in their stables. The Applicant was subsequently found guilty of the charge.

When determining penalty, the stewards took into account the Applicant's personal circumstances and his disciplinary history. However, the stewards were also mindful of similar penalty precedents and the requirement to ensure each penalty acts as an appropriate deterrent given the negative impact such actions have on the integrity of the racing industry.

Stewards subsequently imposed a fine upon the Applicant in the amount of \$5,000.00.

The Applicant sought a review on charge and penalty and provided the following submissions in support of his Application:

"On Wednesday 3rd October 2018 after completing track work I went home as is my usual practice after making arrangements with staff who were working later that day at the Gold Coast Race meeting. I received a call from strapper stable Mr Xanthopoulos (Billy) who informed me two stewards were at the stables. I left home and arrived at the stables to be greeted by QRIC stewards Mr Heidke and Mr Jackson. Billy was there as he was intending to work that day as his horse was engaged at the Gold Coast that day. A conversation took place between Billy, myself and the two QRIC stewards which was recorded. An inquiry was commenced before race 1. As a result of the inquiry the horse She's A Youeffoh was scratched at 1:54pm 3 October 2018. All of my horses racing that day were swabbed.

The adjourned hearing was reconvened on 5th November 2018. I received notice that all swabs taken from my horses that raced on 3 October 2018 were clear. I am very disappointed in the behavior of my stablehand/strapper Billy. I was of the view he was a responsible person and I would not have agreed to him being a stable hand/strapper for me if I had any suspicion he would not obey the rules of racing. I deny I have offended any Rules of Racing and particularly deny I was negligent in my supervision of any of my staff including Billy. I can't be at the stables 24/7/365 it is not possible to operate without staff being at the stables at times when I am not. Examples are when I attend race meeting etc someone must attend to the rest of the daily routine at the stable twice a day as is well known. I make necessary enquiries about people whom I employ and I have rarely had any issues and never like this one. I trusted Billy and particularly with his own horse. I regularly have other people attend the stables when I am not present such as the farrier and the vet who may be treating a sick or injured horse. I always record in my treatment book anything administered or given to any horse trained by me. Generally I give all such recorded treatment sometimes a vet might administer treatment and I record it in the treatment book afterwards. Addendum attached with further submissions.

I have never permitted any employee to treat any horse orally or otherwise at any time without my direct knowledge and approval. This included 3rd October 2018 and the horse She's A Youeffoh when instructions to the effect any treatment to the horse had neither been requested by Billy nor given by me.



I am of the view AR175(k) is a rule that prescribes what is offensive and not a rule that requires obeying for which the Stewards may penalise a person who breach a particular rule or who has caused another to breach any rule. I have always conducted myself with the upmost integrity. I say that none of the matters raised at the inquiry by any of the attendees show that I have breached my duty of care for my horse. I say that the evidence given at the inquiry by myself was forthright, truthful and given openly at the time. I say that there is no evidence that any of my actions on 3 October 2018 caused someone else to breach the rules and if any breach occurred then that person was acting on a frolic and without my knowledge."

The outcome sought by the Applicant was a finding that the Applicant had not breached any rule of racing or that the Applicant's conduct did not or could not be construed as causing someone else to breach the rules of racing and that the fine of \$5,000.00 imposed be set aside. In the alternative that the fine imposed is manifestly excessive in the circumstances.

PART 4: Reasons for Internal Review Decision

The Applicant was subjected to a stewards' inquiry following a report received by Mr Scott Heidke and Mr Ryan Jackson of the Queensland Racing Integrity Commission's Integrity Investigations Team into alleged activities that occurred on 3 October 2018 at the Applicant's licensed stables. The alleged activities involved Mr Billy Xanthopoulos, a licensed stable employee of the Applicant and owner of SHE'S A YOUEFFOH, which was engaged to race later that day at the Gold Coast Turf Club.

During the initial stewards' inquiry conducted on 3 October 2018, evidence was provided by the Applicant, Mr Heidke, Mr Jackson and Mr Xanthopoulos.

Mr Heidke, in evidence, stated *"Ryan Jackson and I, as part of our routine race day inspections, we opened an unlocked gate - (inaudible) gate - into Mr Kelly's property, and making ourselves known Mr Xanthopoulos came out of the room adjacent to the feed room there holding a bottle - which I have taken a picture of - I will get the correct name for it, Gastrozone - with a syringe in his hand. When he identified himself, and when asked what he was doing with that, he admitted his intent was to give the medication to a mare of his that was racing, which I then identified as She's A Youeffoh. Went over it with Mr Xanthopoulos and verified the mare with a brands and marking sheet. That was the correct mare, which is engaged today."*¹

Mr Jackson, in evidence, concurred with Mr Heidke's evidence stating *"Exactly as Mr Heidke said. We entered the property. A stablehand proceeded to walk out of the feed room with a white container and syringe in his hand. When questioned who he was, he presented his licence, and then proceeded to tell us that he was there to administer the medicine to the horse She's A Youeffoh and he admitted that he had intentions to administer and wasn't aware of the race day rule that it is illegal to administer on race day."*² The inquiry heard the Applicant had assisted Mr Kelly for several years at the stables including on race days.

¹ Transcript of Stewards' Inquiry dated 3 October 2018, page 2 and 5

² Transcript of Stewards' Inquiry dated 3 October 2018, page 3



The chairman of the inquiry questioned *"She's A Youeffoh, has it been treated with anything else today?"* to which Mr Xanthopoulos replied *"No. She hasn't been treated at all. As I said to the two stewards, I came out of the tack room with the natural Gastrazone, and obviously I was waiting for Les to ask him can we administer - can we give this to the horse on race day, and Les on the phone when I rang him up when the boys wanted to see him said "No, we can't give anything to a horse on race day." So Les was unaware of what I was doing."* The chairman of the inquiry then questioned *"So why would you be even considering giving a horse Gastrozone today?"* to which Mr Xanthopoulos replied *"Well, being a natural product, it's a humate. It's a humate. It's made from grass and things that horses can't eat in the stables. I wasn't thinking. I thought maybe because it's natural it's got no - no banned substances in it, etcetera, and maybe we could administer it, but, as Les said on the phone, we can't give a horse anything on race day."* The chairman of the inquiry further questioned *"So have you given the horse Gastrozone before?"* to which Mr Xanthopoulos replied *"Before, yes, but not on a race day"* to which the chairman then questioned *"What is the purpose of giving the horse Gastrozone?"* to which Mr Xanthopoulos replied *"Well, it's just for ulcers and stress and things like that, and when they travel. Whatever it says on the bottle. I bought it from Garrards."*³ The inquiry heard SHE'S A YOUEFFOH has no history of stomach ulcers.

The chairman of the inquiry further questioned *"Just to Mr Heidke or Mr Jackson, if you could clarify Mr Xanthopoulos' comments when you first arrived. Was there any indication that he was going to check with Mr Kelly first?"* to which Mr Jackson replied *"He did state - and I do have a digital recording here of the conversation. He did state that when we asked what he was doing he said, "I'm going to administer to the horse. I'm just waiting for Mr Kelly to arrive before asking him." So he did identify to us that he was waiting for trainer Les Kelly to arrive."* Mr Xanthopoulos added *"If Les said no, obviously we wouldn't do it because it - it doesn't enhance performance or anything - it is just like giving the horse grass or - it's actually grass from a meadow. If you read the bottle, it's grass from a meadow that's been diluted. Stable horses can't get humates and grass."*⁴

The audio of the stable inspection was played to the inquiry to establish some clarity as to the Applicant's evidence that he was intending to seek advice from Mr Kelly prior to administering the Gastrazone to SHE'S A YOUEFFOH. The transcribed audio of stable inspection, in part, stated:

"MR JACKSON: "Ryan Jackson from QRIC. Your name, sorry?"

MR XANTHOPOULOS: My name is Billy.

MR JACKSON: Billy. This is Scott Heidke.

MR HEIDKE: How are you, Billy. What is your last name, Billy?"

MR XANTHOPOULOS: Xanthopoulos.

MR JACKSON: Stablehand? You are licenced. Very good.

MR HEIDKE: What was going on with this one, Billy?"

MR XANTHOPOULOS: That's for ulcers. Just normal - like humates (inaudible) natural stuff.

³ Transcript of Stewards' Inquiry dated 3 October 2018, page 4

⁴ Transcript of Stewards' Inquiry dated 3 October 2018, page 5



MR HEIDKE: Yes. Were you going to give it to one?

MR XANTHOPOULOS: I was going to give it to my mare, She's A Youeffoh.

MR HEIDKE: Okay.

MR XANTHOPOULOS: If you read it, it's just (inaudible). When they travel or when they (inaudible).

MR HEIDKE: All right.

MR XANTHOPOULOS: (Inaudible).

MR HEIDKE: So where is She's A Youeffoh going?

MR XANTHOPOULOS: As I said (inaudible). Garrards

MR HEIDKE: So when - what was Youeffoh doing? Is She going out is she?

MR XANTHOPOULOS: No, no. Youeffoh is running today.

MR HEIDKE: Oh. So you are going to give that to her now?

MR XANTHOPOULOS: Yes. You are allowed to give it to her now. It's not - it hasn't got anything illegal in it. Well, aren't you? I'm not sure.

MR HEIDKE: No.

MR JACKSON: You're not allowed to administer anything race day.

MR XANTHOPOULOS: Oh, all right.

MR HEIDKE: You said you were going to give that to Youeffoh?

MR XANTHOPOULOS: Give that, yes. I was going to give that - when they travel or whatever.

MR HEIDKE: Do you have your licence there?

MR XANTHOPOULOS: Yes.

MR HEIDKE: (Inaudible).

MR JACKSON: It is illegal to administer anything to your horse other food and water on race day.

MR XANTHOPOULOS: (Inaudible). I didn't know that...truly.

MR HEIDKE: When you say your mare, do you own Youeffoh?

MR XANTHOPOULOS: Yeah.

MR JACKSON: Who trains it?

MR XANTHOPOULOS: Les Kelly.

MR JACKSON: Does Les know that's what you were going to do?

MR XANTHOPOULOS: No, but I was going to tell him when he arrived here.



MR JACKSON: Just walked in. Les Kelly is here. His stablehand is Mr Billy Xanthopoulos has admitted to us he was going to administer to one of the horses a Gastrozone oral diuretic.”⁵

Subsequent to the audio of stable inspection being played to the inquiry, the chairman of the inquiry questioned “Mr Xanthopoulos, was that - that recording it tends to - well, indicates to myself - and correct me if I'm wrong - that when initially asked about your actions you said you were going to administer the Gastrozone to She's A Youeffoh” to which Mr Xanthopoulos replied “Only if Les would have said it was okay, and when he arrived - but obviously it wasn't okay so it wouldn't have happened.”

The chairman of the inquiry then questioned “But on that recording there there is no indication that you were going to question or ask if it was okay of Les. I think when asked what you were going to do with it you said that you were going to give it to She's A Youeffoh and you were going to tell Les what you had done when he arrived” to which Mr Xanthopoulos replied “No, that was part of the recording as the stewards will confirm. That was part of the recording with the steward. There was more conversation that went on.” The chairman of the inquiry further questioned “Have you ever recorded the treatment in the treatment book?” to which Mr Xanthopoulos replied “It's not a treatment. It's a - you usually pour it on the feed. They eat it. I think the alarm came when I had the syringe there. It's an additive to the feed.” The chairman of the inquiry then questioned “But you were going to administer it via the syringe today, weren't you?” to which Mr Xanthopoulos replied “No. Not (inaudible) we were going to put it - I was going to put it in the food if Les said it was okay.” The inquiry heard SHE'S A YOUEFFOH received its morning feed at 3:30am on the subject day.⁶

The chairman of the inquiry stated “The problem is nothing is allowed to be administered to the horse” to which Mr Xanthopoulos replied “I understand. That's why (inaudible). That being so harmless I thought I would ask Les about it when he arrives. But he was about 15 minutes away. I apologise for the whole drama and inconvenience, especially putting Les in this position. He's a very astute trainer.” The chairman then questioned “My next question is - how often or on what basis do you treat the horses without Les' instructions?” to which Mr Xanthopoulos replied “I don't treat the horses without Les' instructions. If anything, I'm I - I give it to my horse. I don't give any other horses anything. Anything that's holistic like humates, molasses, antibiotics.”⁷

Further evidence of the audio of stable inspection was played to the inquiry, which stated:

“MR JACKSON: Is this the any horse that you are going to give that to, Billy, or

MR XANTHOPOULOS: (Inaudible). Yes.

MR JACKSON: Mr Kelly wasn't aware that that's what you were going to do. Is that normal practice for you to do that on race day?

MR XANTHOPOULOS: No. I was going to give it to them but at the same time I was waiting for Les to come, or somebody to come to hold (inaudible) and if - well, if Les said, you know, 'Don't do it', obviously I would have done it.”⁸

⁵ Transcript of Stewards' Inquiry dated 3 October 2018, page 5, 6 and 7

⁶ Transcript of Stewards' Inquiry dated 3 October 2018, page 8 and 9

⁷ Transcript of Stewards' Inquiry dated 3 October 2018, page 9

⁸ Transcript of Stewards' Inquiry dated 3 October 2018, page 10 and 11



The chairman of the inquiry then questioned *“Mr Xanthopoulos, at that point I believe I heard you say that you were going to wait for someone to come and hold the horse”* to which Mr Xanthopoulos replied *“Les holds the horse. I administer some of the humates and the food in the mouth or depending on how Les would have said the best way to do it is if it was allowed.”*

The chairman of the inquiry further questioned *“Just before you said you just do it over the feed. Why would you need someone to hold the horse if you are just going to give it in the feed?”* to which Mr Xanthopoulos replied *“If Les said it was okay to do it on race day (inaudible) know it's not okay to do anything natural, maybe we would have been put to do it with a syringe in the mouth, or he might have said to put in the feed. I didn't know it was - wasn't sure and that's why I was waiting for him.”*

The chairman of the inquiry then questioned *“It appears as if the only time you indicated you were going to seek Mr Kelly's permission was after you found out that it is not allowed on race day”* to which Mr Xanthopoulos replied *“No, that's - I always seek Les Kelly's permission for everything.”*⁹

Further evidence of the audio of stable inspection was played to the inquiry which, in part, stated:

“MR JACKSON: You haven't done it before? Is that the first time you were going to do that or have you done that before to the racehorse?”

MR XANTHOPOULOS: Only - not on race days or anything like that, but just, you know, during training or before they go on the walker or when the horse goes for a trip.

MR JACKSON: Ennm.

MR XANTHOPOULOS: It's meant for stress and acid for ulcers.

MR JACKSON: Okay.

MR XANTHOPOULOS: It's an all natural product. A hundred percent natural.

MR HEIDKE: So you had the intention there with the syringe in your hand with the (inaudible) and you admitted that you were planning to give that to the mare (inaudible).

*MR XANTHOPOULOS: Yes, I was going to ask Les of course. I was going to wait for somebody, especially Les, and say, “Look, do you want to administer it, Les”, or whatever, and if it's against race rules, Les would have said, “It's against race rules.” I didn't know it was against race rules.”*¹⁰

The Applicant, in evidence, stated *“There is no way in the world that I would let him give that to a horse. There is no relevance in it. I went off my head when he told me.”* The chairman of the inquiry questioned *“It's concerning to say the least that you have got staff that are willing to - or shows an indication to administer products without your knowledge”* to which Mr Kelly replied *“Yes. There is no way in the world that I would let him give it anything on race day.”*¹¹

⁹ Transcript of Stewards' Inquiry dated 3 October 2018, page 10 and 11

¹⁰ Transcript of Stewards' Inquiry dated 3 October 2018, page 11 and 12

¹¹ Transcript of Stewards' Inquiry dated 3 October 2018, page 8 and 12



Mr Kelly added *"I can guarantee the horse has had nothing to my knowledge. I didn't know. It was a shock to me. When he rang me I said - I asked him what was going on, and he said - mentioned it, and I said, "Well, you can't give nothing to horses on race day." And I was actually just getting ready to come to the stables because I had the strappers and that coming there at 1 o'clock to get the horses over to the races."*¹²

The inquiry heard Mr Xanthopoulos purchased the Gastrazone from Garrards Horse and Hound and further heard the Applicant does not use the substance nor is it stored at the stable. The reviewer acknowledges there was no recorded treatment in the Applicant's treatment records for the substance Gastrazone to SHE'S A YOUEFFOH or any other horse in the stable.

For clarity Australian Rule of Racing 178F(1) states:

"A trainer must record treatment and medication administered to each horse in his or her care by midnight on the day on which the administration was given, and each record must include the following information:

- (a) the name of the horse;*
- (b) the date and time of administration of the treatment or medication;*
- (c) the name of the treatment or medication administered (brand name or active constituent);*
- (d) the route of administration including by injection, stomach tube, paste, topical application or inhalation);*
- (e) the amount of medication given (if applicable);*
- (f) the duration of a treatment (if applicable);*
- (g) the name and signature of person or persons administering and/or authorizing the administration of the treatment or medication."*

The Stewards, pursuant to Australian Rule of Racing 8(m), subsequently ordered the withdrawal of SHE'S A YOUEFFOH from Race 3 at the Gold Coast Turf Club on 3 October 2018 and adjourned the inquiry to a date to be fixed. The Stewards further ordered a swab sample be taken from SHE'S A YOUEFFOH and from all other horses trained by the Applicant that were engaged to race on the subject day.

For clarity, Australian Rule of Racing 8(m) states:

"To assist in the control of racing, Stewards shall be appointed according to the Rules of the respective Principal Racing Authorities, with the following powers:

- (m) to prohibit any horse from starting in any race."*

During the resumed stewards' inquiry conducted on 5 November 2018, further evidence was provided by the Applicant, Mr Xanthopoulos, Dr Kevin Squire, stable veterinarian for the Applicant, and Dr Martin Lenz, Director of Veterinary Services at the Racing Science Centre.

¹² Transcript of Stewards' Inquiry dated 3 October 2018, page 13 and 14



Dr Squire, in evidence, stated *"I have been in racetrack practice for 40 years over four different continents - have serious concerns with the marketing of these products. To start with they are labelled incredibly confusingly so that people without a medical education would look at this - for example, the third line down here in capital letters it says "Ulcers", but the words above it say "Horses give trainers ulcers." But you would infer that Gastrozone - the other thing is there is a legal veterinary medicine called Gastrozol which has metrozol in it, which is one of the two medicines that treats ulcers - and both of them are restricted and can only be obtained through veterinarians. So Gastrozone and Gastrozol, you know - so it would infer to most people that the word ulcer - that this is going to treat horse ulcers. I have been doing Mr Kelly's work probably for nearly 20 years, and he's - well at least over the last 2 or 3 years has never bought any ulcer medication. We have never treated his horses for ulcers. We have never - he has never asked me to look at horses which might have a problem with ulcers. So Mr Kelly's training and feeding regime does not include treatment for ulcers. So this product would be one that an owner would like to have administered to his horse maybe. The other problem that I have with these products as open sellers is this product - this is not quite the label - it's very close to it. It doesn't have any indication what's in there. Who knows? I'm surprised that the AVPMA - which is Australia Veterinary and Pesticide Management Authority - allows these products to be sold. So if the racing authorities have problems with trainers or owners using these products, I'm just a little bit amazed that Racing Australia doesn't get on to the manufacturers, or at least have some regulations as to the sale of products like this. If you look at the back of the bottle in fine print: "Typical constituents per litre" - all nothing. Also added thiamine - which is Vitamin B1 - at 2350 milligrams per litre. That's all it's got. So we have no idea. There could be cobalt in here. There could be salicylic acid. Who knows what's in there. So I can't look at this professionally and say what this is. If you read through the marketing label on this printout here - which Mr Kelly got off the Internet - and the bottle it never says it's for treatment of horse ulcers, although that first statement there, and also here, "It's forever said that" - "It's forever being said that horses give trainers ulcers." Big red letters. You know, so it's very easy for someone who doesn't read the label closely, "Oh, Gastrozone - it's not Gastrozol" - it's ulcers - for horse ulcer treatment."*¹³

The Applicant was questioned *"If Dr Squire has never sold anything of this particular - like that particular product or anything like it to you, why is it in your stables?"* to which the Applicant replied *"Well, Billy bought it, and Billy only gives horses natural stuff. His stuff in there consists of pumpkin seeds, olive oil, and he shows me the stuff, and I had a quick look at that when it was there and I just thought it was only a supplement for the feed, because it says on it that it is a feed supplement so I didn't - and that's why I got him registered (inaudible) like owners they like to interact with his own horses. He don't touch any of my other horses. It's only his own horse."* The chairman of the inquiry further questioned *"I understand what you are saying there, but this wasn't the first occasion"* to which the Applicant replied *"No, he gave that to his horse before and I - there is no way in the world I would have let him use it on a race day."* The chairman of the inquiry then questioned *"The question I come back to is that if you don't have any use for it, why do you permit its presence in the stables?"* to which the Applicant replied *"Well, it was only for his own horse, and I knew that it was only a dietary supplement."*¹⁴

The chairman of the inquiry questioned *"Do you think in hindsight that's a dangerous recipe to allow your owners or stablehands to be administering what they think is right for the horses?"* to which the Applicant replied *"I've had owners*

¹³ Transcript of Stewards' Inquiry dated 3 October 2018, page 19 and 20

¹⁴ Transcript of Stewards' Inquiry dated 3 October 2018, page 21 and 22



there all the time. They bring in their own stuff. Like some owners might want a certain product for their horse or whatever. If I hunted every owner, they would only take them to somebody else to train.” The chairman of the inquiry then questioned *“I’m not asking you to punt the owner, but just to say “This is the way that I train horses. This is what I’m going to give to them”* to which the Applicant replied *“But I see no harm in the stuff. Like I look at the - I’ve had a talk with Billy and other people in the stable that this won’t be happening again.”*¹⁵

The Applicant added *“Yes, that won’t happen any - there is no way in the world - I’ve got a fellow living on the site now and if anybody walks in there they won’t be allowed in there unless they have got my authority.”* The chairman of the inquiry questioned *“Was there - is there anything in writing or a direction given to staff about when and how and why they can administer or treat horses, or is there a general understanding that it’s only you to be doing that”* to which the Applicant replied *“It’s a general understanding in the place that no one is allowed to touch the horses - like administer anything to them. Especially race day. There is no way that those horses get anything race day to my knowledge.”*

The chairman of the inquiry further questioned *“But obviously there is an understanding that that rule wasn’t hard and fast because Mr Xanthopoulos was allowed to touch the horses or administer”* to which the Applicant replied *“Well, he was never allowed to administer race day. There is no - he had - he usually only comes to the stables when I’m there anyhow, and it’s quite minimal what he does to his horse. He paints its feet when it comes off the walker, and he might brush it. He has his little mixture of food supplements, and he mixes up apples, carrots in just a little thing and puts it on the top of its feed. That type of stuff. I thought it was no harm in any of these food supplements because you’ve seen that mare come out here and you see the dapples on it. She looks enormous. So if you look at the horse and you think that it’s not hurting it. But I will be keeping a close fist on the stable, don’t worry about that. I won’t be letting anything go past me.”*¹⁶

Dr Lenz provided evidence particular to the product Gastrazone stating *“It actually states in part of the information that is available with the product - I mean - look, to most people, and certainly to my way of looking at it, it’s a feed supplement. It’s something that you supplement the feed with. It doesn’t contain, you know, the regular components of a normal feed - you know, that you would class it as a feed per se - but it has some additional products in there that are used to supplement what a normal feed would provide the horse. So my opinion is that it is certainly one of the many feed supplements that are available out there. Looking at the label itself, it lists one particular component - thiamine - which is a vitamin - one of the B group vitamins - which is often utilised to try and maintain normal appetite in a horse, and obviously has other plant-based ingredients, but, yes, to me it’s certainly in the large group of, you know, dietary supplements that are freely available to trainers and owners to use. It’s - my veterinary colleagues said it’s an open seller so it doesn’t require a prescription from the vet, but, yes, it certainly is what I would class as a nutritional supplement.*

The chairman of the inquiry questioned *“The rules regarding race day administration refer to a medication, and I think a medication is defined as effectively any other substance”* to which Dr Lenz replied *“I - certainly, you know, if it has ingredients like thiamine in there - thiamine being a B vitamin - it has a specific action on one of the systems in the body. So it would be a - you know, it would be classed broadly speaking as a prohibited substance under that definition.*

¹⁵ Transcript of Stewards’ Inquiry dated 3 October 2018, page 36

¹⁶ Transcript of Stewards’ Inquiry dated 3 October 2018, page 52 and 53



So not - you know, the definition is very broad, but it is anything that has an effect on one of the body systems, and the argument is certainly quite easy to make for thiamine. It is a, you know, particularly - you know, it is a Vitamin B1 so it has a specific - specific set of actions on, you know, the nervous system for one, but on multiple systems in the horse's body."¹⁷

Dr Lenz added "I would say it's a liquid supplement. There are a multitude of these supplements available, but it's not - in of its own it's not - it's not a feed as such because it doesn't provide, you know, the sort of the general nutritional and dietary requirements of a horse - it supplements what a normal feed would provide. The racing rule that I would say it falls under is not to be administered on the day of racing. You know, nothing to be given on the day of the race except for feed and water."¹⁸

The inquiry heard all samples obtained from the Applicant's horses engaged to race on the subject day including SHE'S A YOUEFFOH were clear of prohibited substances.

The Applicant's complete submissions for review are outlined in Part 3 of this decision.

The Stewards, pursuant to Australian Rule of Racing 175, are authorised with powers delegated to them to penalise any offence listed under the aforementioned rule. The reviewer is satisfied the negligence, and the specifics of such negligence, is outlined in the charge the subject of review and in accordance with the requirements of the respective Rules of Racing.

The reviewer acknowledges that it is widely accepted due to the demographic landscape of the racing industry that trainers are unable to physically be present at the stables 24/7 and as a consequence are reliant on stable employee's to undertake stable duties under their authority and importantly in accordance with the Australian Rules of Racing. The Applicant is responsible for the complete management of the stables and to ensure stable practices are of a standard that prevent any risk or exposure to an offence pursuant to the Australian Rules of Racing.

The reviewer accepts Mr Xanthopoulos purchased the Gastrazone and that such substance was not previously used or stored by the Applicant at the stables. Notwithstanding, the Applicant was completely aware Mr Xanthopoulos was in possession of a container of Gastrazone at the stables and permitted Mr Xanthopoulos to regularly administer such substance to SHE'S A YOUEFFOH.

The reviewer finds the fact that Mr Xanthopoulos was intending to administer Gastrazone to SHE'S A YOUEFFOH in contravention of Australian Rule of Racing 178E(1), or as later alleged was waiting to seek advice from the Applicant before considering such administration, is nevertheless a failure by the Applicant to adequately inform Mr Xanthopoulos of the strict requirements of the rule and/or a failure to implement a stable management practice that prevented any potential risk or exposure to an offence pursuant to the Australian Rules of Racing.

The reviewer accepts Australian Rule of Racing 178E(1) is a 'common knowledge' rule that places a strict obligation and responsibility on participants to ensure that no person without the permission of the stewards may administer or cause to be administered any medication to a horse on a race day.

¹⁷ Transcript of Stewards' Inquiry dated 3 October 2018, page 48 and 49

¹⁸ Transcript of Stewards' Inquiry dated 3 October 2018, page 51



The rule is designed to provide a level playing field for racing participants that play within the boundaries of the rules, and to protect the interests of the wagering public and broader racing community. The reviewer finds it fanciful to accept in the current climate that any stable employee would not be completely au fait with the strict requirements pursuant to the aforementioned rule.

The Applicant's sole defence primarily relied upon the evidence he was unaware of Mr Xanthopoulos' intention to administer Gastrazone to SHE'S A YOUEFFOH stating "*I didn't know*". The reviewer finds such defence is unacceptable unless there is some evidence of complete sabotage from an outside influence to dope or interfere with the horse. The task of administering Australian Rule of Racing 178E(1) would be completely onerous in the event that such defence was accepted. The Applicant is responsible for the management of his stables practices and to ensure all stable employees act in accordance with the Australian Rules of Racing. Notwithstanding, the reviewer accepts the importance that each case is treated on its merits and set of circumstances.

The reviewer, in considering the totality of evidence and aforementioned factors, is satisfied to the requisite standard that the Applicant had no prior knowledge of Mr Xanthopoulos' intention to administer Gastrazone to SHE'S A YOUEFFOH in contravention of Australian Rule of Racing 178E(1). Notwithstanding, the reviewer finds the Applicant failed to adequately inform Mr Xanthopoulos of the strict requirements of the rule particular to Gastrazone and/or failed to adequately implement a stable management practice that was of a standard that prevented any risk or exposure to a potential offence pursuant to the Australian Rules of Racing, in particular 178E(1).

The reviewer finds such failure constitutes an offence of negligence pursuant to Australian Rule of Racing 175(k), in that such negligence would have led to Mr Xanthopoulos administering a medication, namely Gastrazone, to SHE'S A YOUEFFOH on the day SHE'S A YOUEFFOH was engaged to race had it not been for the timely unannounced stable inspection conducted by officials of Racing Integrity Commission's Integrity Investigations Team. Accordingly, the reviewer is satisfied to the requisite standard that the charge pursuant to Australian Rule of Racing 175(k) is proven.

The Applicant's submissions on penalty, in part, state "*The fine imposed is manifestly excessive in the circumstances. I rely upon the attached case to assist in that regard. Both the attached decisions would appear to be more significant issues and attracted a lesser fine than imposed on Mr Leslie Kelly.*"¹⁹ The attached decisions referred to the Queensland Racing Disciplinary Board's decision in *Mr Thomas Button v Racing Queensland Stewards* dated 12 September 2014 and the Internal Review Decision in *Mr John Brassington* dated 24 October 2017. The reviewer acknowledges the aforementioned decisions and notes the importance that each case is treated on its merits and set of circumstances.

The Applicant has held a trainers licence for approximately forty (40) years and is clear of any offence pursuant to Australian Rule of Racing 175(k). The Applicant's disciplinary history in that period demonstrates two (2) prior offences particular to 'negligence' in the saddling of a horse pursuant to Australian Rule of Racing 140A in 2001 and 2006 respectively. The Applicant's disciplinary history demonstrates two (2) prior offences particular to Australian Rules of Racing 178 (presenting a horse to race with a prohibited substance) and 175(h) (administer or cause to be administered a prohibited substance to a horse) in 1998 and 2009 respectively. The penalty precedents pursuant to Australian Rule of Racing 175(k) range between a monetary fine and up to two (2) years' disqualification.

¹⁹ Application for an Internal Review dated 14 November 2018



In weighing up the matter of penalty, consideration was provided to the Applicant's submissions, disciplinary history, not guilty plea and penalty precedents particular to the aforementioned rule and set of circumstances. The reviewer accepts the Applicant had no prior knowledge of Mr Xanthopoulos' intention to administer Gastrazone to SHE'S A YOUEFFOH in contravention of Australian Rule of Racing 178E(1). Mr Xanthopoulos was subsequently disqualified for a period of six (6) months pursuant to Australian Rule of Racing 175(a), being an improper action in connection with racing for his actions on the subject day. Notwithstanding, the Applicant is responsible for the complete management of his stable practices and stable employees to ensure adequate procedures are implemented and are of a standard that prevent any risk or exposure to any potential offence pursuant to the Australian Rules of Racing, in particular 178E(1). The reviewer acknowledges the Applicant has subsequently implemented remedial measures by employing a foreman that lives onsite at the stables to prevent a similar occurrence.

The reviewer accepts each case is treated on its merits and set of circumstances and acknowledges any penalty imposed not only needs to be fair and evidence based, but further serve as a deterrent to any likeminded persons. Accordingly, the reviewer, having considered the evidence in totality and taking into account the aforementioned factors, finds the original penalty imposed excessive in the circumstances and therefore amends the penalty to a fine of \$5,000.00 of which \$3,000.00 is wholly suspended under the provisions of Australian Rule of Racing 196(4) for a period of two (2) years on the condition the Applicant does not reoffend in that period.

For reference, Australian Rule of Racing 196 sub-section (4) states:

(4) Any person or body authorised by the Rules to penalise any person may in respect of any penalty imposed on a person in relation to the conduct of a person, other than a period of disqualification or a warning off, suspend the operation of that penalty either wholly or in part for a period not exceeding two years upon such terms and conditions as they see fit.

PART 5: Review Rights following Internal Review Decision

In accordance with section 246 of the *Racing Integrity Act 2016*, as the applicant for an internal review of the original decision, you are able to apply to the Queensland Civil and Administrative Tribunal (QCAT) for an external review of the internal review decision.

An external review is commenced by lodging the appropriate forms with QCAT. In accordance with section 33 of the *Queensland Civil and Administrative Tribunal Act 2009*, an application for an external review of an internal review decision is to be made within 28 days from the day this internal review decision notice is provided to the applicant.

For further information regarding the processes for an external review of the decision, please contact QCAT:

Queensland Civil and Administrative Tribunal

Registry Location: Level 9, 259 Queen Street, BRISBANE QLD 4001
Postal Address: GPO Box 1639, BRISBANE QLD 4001
Phone: 1300 753 228
Email: enquiries@qcat.qld.gov.au