



## HEARING RESULT

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**FROM:** Registrar – Racing Appeals and Disciplinary Board

**DATE:** 25 May 2011

**SUBJECT:** HEARING RESULT – TRAINER: BARRY JAMES

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**Panel** Judge Russell Lewis (Chair), Mr Brian Forrest (Deputy Chair),  
Mr Joshua Bornstein.

**Appearances** Mr Anthony Lewis, instructed by Mr James Dowsley of Dowsley &  
Associates, appeared as Counsel for Mr James.

Mr Anthony Burns, instructed by Racing Victoria's James Ogilvy,  
appeared as Counsel for the Stewards.

**Charge** Breach of AR 178.

The charge relating to a prohibited substance, being hydrocortisone at a  
mass concentration in excess of 1.00 milligrams per litre in urine, detected  
in the horse *Sylvan Cee Tee* following its win in the *Ian Brilliant  
Bookmaker On The Front Lawn Maiden Plate* (1400m) at Horsham on  
Sunday, 17 October 2010.

**Plea** Not Guilty.

**Decision** The Board finds the charge proved.

Mr James convicted and fined the amount of \$4,000.  
Fine due on or before midnight 30 June 2011.

Pursuant to AR 177 *Sylvan Cee Tee* disqualified as winner of Race 3 the  
*Ian Brilliant Bookmaker On The Front Lawn Maiden Plate* (1400m) at  
Horsham on Sunday, 17 October 2010 and the places amended  
accordingly:

1<sup>st</sup> – *Port of Fame*, 2<sup>nd</sup> – *Zodiac Prince*, 3<sup>rd</sup> – *Beware of Me*,  
4<sup>th</sup> – *Tellustrev*, 5<sup>th</sup> – *Al Zahir*, 6<sup>th</sup> – *Rainbow Rex*.

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# **TRANSCRIPT OF PROCEEDINGS**

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## **RACING APPEALS AND DISCIPLINARY BOARD**

**HIS HONOUR JUDGE R.P.L. LEWIS, Chairman**  
**MR B. FORREST**  
**MR J. BORNSTEIN**

## **EXTRACT OF PROCEEDINGS**

## **DECISION**

**TRAINER: BARRY JAMES**

**MELBOURNE**

**WEDNESDAY, 25 MAY 2011**

MR A.G. BURNS appeared on behalf of the RVL Stewards

MR A.P. LEWIS appeared on behalf of Mr B. James

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CHAIRMAN: On 17 October 2010, a post-race urine sample was taken from Sylvan Cee Tee, the winner of a maiden race at Horsham. The horse was trained by Mr Barry James. Upon analysis, a prohibited substance was detected, being hydrocortisone at a mass concentration in excess of 1.00 milligrams per litre in urine.

The RASL sample - and by RASL, I mean Racing Analytical Services Ltd - V168012 produced a reading of 1.3 milligrams per litre in urine; the referee sample, a reading of 1.38. The allowable uncertainty of measurement is plus or minus 0.1. Under Australian Rule of Racing 178C(1)(f), a mass concentration of hydrocortisone greater than 1.00 milligrams per litre in urine makes it a prohibited substance.

Hydrocortisone naturally occurs in horses and is therefore an endogenous substance. It is an endogenous steroidal hormone produced by the cortical cells of the adrenal glands. It belongs to a class of a steroidal hormones referred to as glucocorticoids. Hydrocortisone is contained in a number of commercial products. It may be administered orally, rectally, topically or by injection. It has, inter alia, anti-inflammatory and metabolic effects.

The Stewards' case which was presented by Mr Burns of counsel is that the finding upon analysis of a reading of 1.3, which is not challenged, even allowing for a measurement of uncertainty of 0.1 or 0.2, is above the threshold and therefore it was a prohibited substance under Australian Rule 178C(1)(f). A likely cause of that elevated reading was human agency. In other words, the

analysis demonstrated that the presence of hydrocortisone in the horse's system was partly endogenous - that is, naturally occurring - and partly exogenous, that is, was introduced into the horse's system.

Mr Anthony Lewis of counsel, who appeared on behalf of Mr James, denied the Stewards' allegations and said that the elevated level of hydrocortisone was entirely endogenous. The reading of 1.3 was due to multiple factors and a number of variables.

Since there is no challenge to the finding upon analysis of 1.3, the Stewards' case has been proved. The question then becomes: what is the appropriate penalty? The appropriate penalty depends upon whether the Board is satisfied by the explanation given to account for the reading of 1.3. The stewards have accepted that they carry the onus of satisfying the Board on the balance of probabilities that the explanation offered by Mr James should be rejected.

The decision of the Board in relation to the explanation turns upon scientific and veterinary evidence. Evidence in relation to the horse's pre-race behaviour, including how it behaved en route from Ballarat to Horsham and at Horsham racecourse was given by Mr Steven Vella, the stable foreman. All associated with Mr James's stable denied any knowledge of administration.

Dr O'Callaghan provided a statement on 31 March 2011, as well as giving oral evidence. It was his conclusion, as summarised in paragraph 130 of his statement, that the likely explanation for the reading was that the high level

was the result of a natural production of hydrocortisone. He said that Sylvan Cee Tee was an exceptional horse who was sampled on an exceptional day. He challenged the appropriateness of the threshold in the Australian Rules of Racing, a threshold accepted internationally since 1994.

Drs Vine and Cust rejected Dr O'Callaghan's opinion. They were firmly of the view that the level of 1.3 could only have been achieved by human agency; that is, the recorded level could not have been a result of natural production. Thus, in essence, whether the Board should accept or reject the explanation proffered comes down to what it makes of the evidence, bearing in mind that the Stewards must satisfy the Board on the balance of probabilities that Dr O'Callaghan's opinion should be rejected.

In coming to such a decision, it is not simply a case of mechanically comparing expert opinion. The Board is required to consider each opinion and give to each opinion the weight it demands. The starting point is that an international equine advisory body has decreed that 1.0 grams per litre in urine is the appropriate threshold.

Dr Vine is an experienced scientist and one of his areas of expertise is pharmacokinetics, toxicology and metabolics. He gave his unqualified support to the international body's benchmark.

Dr O'Callaghan admitted that he is the only expert, veterinary or otherwise, who has challenged the threshold figure, although, he said, at least two other

veterinarians had expressed their concerns to him. One was Dr McCaffrey, who the Board knows is a Melbourne-based veterinarian. Dr McCaffrey was not called to give evidence.

Dr O'Callaghan has not published a paper consistent with the views he expressed to the Board. There is no published paper in evidence by a reputable scientist or veterinarian which holds to the view that 1.0 is not the appropriate threshold level. It is clear that Drs O'Callaghan and Vine differ as to the conclusions to be drawn from the published surveys.

Where there are differences in opinion, the Board prefers the opinion of Dr Vine. The Board found his evidence highly persuasive, inter alia, having regard to his vast experience and expertise.

In arriving at the decision of whether the Stewards have satisfied the Board that Mr James' explanation should be rejected, the Board makes the observation that the Stewards are not required to identify the substance or substances which resulted in the elevated reading, nor is the Board required to engage in a similar exercise. The explanation offered by Dr O'Callaghan is possible, but falls short of probability.

Upon a consideration of the whole of the evidence, the Board is satisfied that the explanation proffered by Mr James that the reading of 1.3 was due entirely to endogenously produced hydrocortisone should be rejected.

On the question of penalty, Mr James has been a trainer for almost 60 years and has an excellent record. However, in view of the Board's decision, a conviction must be recorded. Financial penalty is the appropriate penalty and a fine of \$4000 is therefore imposed to be paid on or before 30 June 2011. The horse, Sylvan Cee Tee, is disqualified as the winner of the Horsham race on 17 October 2010.

**END OF EXTRACT**