15 March 2021

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**ALFIO GRASSO**

**Date of hearing:** 10 March 2021

**Panel:** Justice Shane Marshall (Deputy Chairperson) and Mr Des Gleeson.

**Appearances:** Ms Amy Wood instructed by Mr Andrew Cusumano appeared on behalf of the Stewards.

Mr Damien O’Dea represented Mr Grasso.

**Charge:** Australian Harness Racing Rule (“AHRR”) 190(1) states:

A horse shall be presented for a race free of prohibited substances.

**Particulars of charge:**

1. On 19 July 2019, the horse ‘Safari Rose’ was presented to race at the Mildura harness racing meeting in Race 1, the ‘DNR Logistics Pace (1st Heat)’;
2. At the relevant time you were the trainer of ‘Safari Rose’;
3. Prior to Race 1, the ‘DNR Logistics Pace (1st Heat)’, a blood sample was collected from ‘Safari Rose’ with subsequent analysis of that sample revealing a plasma total carbon dioxide (TCO2) concentration in excess of the allowable threshold;
4. As the trainer of ‘Safari Rose’ on 19 July 2019, you presented that horse to race in the ‘DNR Logistics Pace (1st Heat)’ at Mildura whilst not free of alkalinising agents, a prohibited substance when evidenced by total carbon dioxide (TCO2) present at a concentration in excess of 36 millimoles per litre in plasma.

**Plea:** Guilty

**DECISION**

1. Mr Alfio Grasso is a licensed B grade harness racing trainer and was, at all material times, the trainer of the horse, “Safari Rose”. Safari Rose competed in Race 1 at Mildura on 19 July 2019. A pre-race blood sample taken from the horse showed the presence of total carbon dioxide (TC02) at a concentration in excess of 36 millimoles per litre in plasma. The reading at the confirmatory laboratory was 36.3 millimoles per litre in plasma. The original laboratory reading was 37.9 millimoles per litre in plasma.
2. Stewards of Harness Racing Victoria (“HRV”) have charged Mr Grasso with presenting a horse for a race while not free of a prohibited substance, contrary to Australian Harness Racing Rule 190(1). Mr Grasso has pleaded guilty. The guilty plea came very late in the proceeding and was confirmed on the first morning of what was listed as a 2 day contested hearing and in circumstances where Mr Grasso had unsuccessfully sought an order for a further independent test of the sample. He had lodged an appeal to VCAT regarding that aspect of the matter.
3. Mr Grasso is at a loss to explain the high TC02 reading. He has no history of transgressions against Rule 190(1) in his long career as a hobby trainer. He sought to make his own inquiry as to a possible cause of the high reading. Since July 2019 none of his horses have been tested and shown a reading of TC02 over the permissible level.
4. Penalty Guidelines introduced by HRV, in January 2019, suggest a penalty of 18 months disqualification for a presentation charge involving TC02. We are informed by those guidelines, but not bound by them.
5. In setting a penalty in this matter, we take into account general deterrence and, to a far lesser extent, specific deterrence. We also take into account the importance of keeping a level playing field by maintaining a drug free industry. We further take into account recent penalties in like cases.
6. In addition, we take into consideration Mr Grasso’s personal circumstances. He is a 68 year old single man relying on a pension. He grows dried feed, but the industry has been a difficult one in recent years. He is in dire financial circumstances. He remains a hobby trainer but can now only afford to lease the two horses that he now trains.
7. Mr Grasso has suggested that the swabbing of his horse which led to the current charge was related to a complaint he made about a Steward. There is no evidence before us on that issue and we find that it has no bearing on our sentencing discretion. Nor do we take into account that Mr Grasso had a very successful 2019/2020 racing year while waiting for this matter to be finalised. He was entitled to continue competing before this matter was finalised and any suspension imposed.
8. The most recent matter in this Tribunal concerning TC02 in a harness racing setting was that of Taiba (14 February 2020). In that matter Mr Taiba had the benefit of an early plea of guilty and cooperation with the Stewards. His long good record in the industry of 28 years was the same as that of Mr Grasso. Mr Taiba received a penalty of 12 months suspension, with 6 months suspended for 12 months.
9. In all the circumstances, we consider the appropriate penalty to be imposed on Mr Grasso is 12 months suspension with 3 months suspended pending no further breach of Rule 190 in the next 24 months. The suspension shall commence immediately.
10. In addition, Safari Rose is disqualified from Race 1 at Mildura on 19 July 2019.
11. Counsel for Mr Grasso made an application for an order that the blood samples taken from Safari Rose be retained by HRV and provided to Horse Genetics. The only power in the Tribunal to make an order of that kind is that contained in Section 50 ZE(1) of the *Racing Act* which allows the Tribunal to make any order it considers is required in the interests of justice.
12. In a Ruling delivered on 1 March 2021 after a hearing on 18 February 2021, Judge Bowman refused Mr Grasso an order that the samples taken from Safari Rose be sent for analysis by Dr Wenzel at the Royal North Shore Hospital. Judge Bowman referred to the Rules of harness racing which, for the purposes of Rule 190(1), make a second certificate from an approved laboratory conclusive evidence of the prohibited substance being present in a sample at the offending level. He also referred to the proposed recipient of the sample not being an accredited laboratory. We have no evidence before us that Horse Genetics is an accredited laboratory. Even if it was such a laboratory, we do not see how the interests of justice can be served by the making of any such order in the present circumstances.
13. Further, as noted in the evidence of Mr Paul Zahra from Racing Analytical Services Limited in the matter before Judge John Bowman, the level of TC02 in a sample will decline with the encroachment of time.

Mark Howard
Registrar, Victorian Racing Tribunal