18 November 2021

**DECISION**

**GREYHOUND RACING VICTORIA**

**and**

**BEN DIVIRGILIO**

**Date of hearing:** 19 October 2021

**Panel:** Judge John Bowman (Chairperson), Justice Shane Marshall (Deputy Chairperson) and Dr Andrew Gould.

**Appearances:** Mr Damien Hannan, instructed by Mr Marwan El-Asmar, appeared on behalf of the Stewards.

Mr Ben Divirgilio was represented by Mr Lynton Hogan.

**Charges:** Local Racing Rule (“LR”) 42.23 states:

It is a Serious Offence to be:

(a) in any way directly or indirectly involved in committing, or knowingly concerned with, such conduct as set out in LR42.18. (added 14/06/2016).

(b) aid, abet, counsel procure any person to commit such conduct as set out in LR 42.18 (added 14/06/2016).

Greyhounds Australasia Rule (“GAR”) 86(d) states:

A person (including an official) shall be guilty of an offence if the person-

(d) being an owner, trainer, attendant or person having official duties in relation to greyhound racing, makes a false or misleading statement in relation to an investigation, examination, test or inquiry, or makes or causes to be made a falsification in a document in connection with greyhound racing or the registration of a greyhound.

**Particulars of charges: Charge 1: LR 42.23**

1. You are and were at all relevant times a breeder and public trainer licensed by Greyhound Racing Victoria (“GRV”) (license number 37339) and a person bound by the Greyhounds Australasia Rules (“GAR”) and Local Racing Rules (“LR”).
2. You were at all relevant times a person responsible for the care and supervision of the Greyhounds housed at your GRV registered kennelling premises in Nambrok, Victoria (licensed premises).
3. On 25 of October 2019, the mobile phone belonging to Rinaldo Divirgilio, a registered GRV participant, was seized by Investigative Stewards and examined.
4. The examination of those text messages between you and Rinaldo Divirgilio establish that you were knowingly concerned with such conduct as set out in LR 42.18, the conduct being, the possession and the attempt to possess live animals by Rinaldo Divirgilio for the purpose of using or likely to be used as bait or lure to encourage a greyhound to pursue it. These messages include;
5. "If Emalline needs a bite got 2 here".
6. "He asked me if I knew someone who could give his dog a possum told him you can 't trust anyone".
7. “Had a big one was very good gave him a rabbit today".
8. "I agree he asked me if I could give him a hand with a possum a few days ago I bet it is for that dog".

**Charge 2: GAR 86(d)**

1. You are and were at all relevant times a breeder and public trainer licensed by Greyhound Racing Victoria (“GRV”) (license number 37339) and a person bound by the Greyhounds Australasia Rules (“GAR”) and Local Racing Rules (“LR”).
2. You were at all relevant times a person responsible for the care and supervision of the Greyhounds housed at your GRV registered kennelling premises in Nambrok, Victoria (licensed premises).
3. GRV Investigative Stewards conducted inquiries with you on 25 October 2019 and on 7 November 2019 regarding your knowledge of any live baiting being conducted at Rinaldo Divirgilio's property.
4. During these inquiries you made a false statement to the Investigative Stewards, in that you stated you had no knowledge that live baiting was occurring at your father Rinaldo's property in Devon Meadows

*Chairman: Also, I asked you if there's anything you can add to whatever it was alleged, so in relation to live baiting, was there anything you could add and you said that there was nothing you could.*

*Mr Divirgilio: No.*

*Chairman: That you had no knowledge of live baiting?*

*Mr Divirgilio: No.*

*Chairman: Do you still stick by that?*

*Mr Divirgilio: Yeah, I do.*

**Pleas:** Not Guilty to all charges.

**PENALTY**

1. Mr Ben Divirgilio (hereinafter referred to as “Ben”) is a greyhound trainer whose licence has been suspended since 7 November 2019 as a result of the matters that led him to be found guilty by the Tribunal on 27 August 2021 of offences under Local Racing Rule (“LR”) 42.23 and Greyhounds Australasia Rule (“GAR”) 86(d). The decision of 27 August 2021 in regards to the hearing held on 29 March and 30 March 2021 should be read in conjunction with this decision.
2. The offence under LR 42.23 relates to conduct which was knowingly concerned with the breach of LR 42.18 by Ben’s father, Mr Rinaldo Divirgilio. The gravity of the finding of guilty under LR 42.23 is that Ben was fully aware of the live baiting activities of his father and was knowingly concerned in them. There was no finding that Ben was himself actually engaged in live baiting.
3. The consequence of a finding of guilty to a charge under LR 42.23 is that the offender is guilty of a very serious offence. The offence, unlike those under LR 42.18, does not carry a prima facie mandatory period of disqualification. However, being knowingly concerned in such a pernicious practice as live baiting compels the Tribunal to impose a significant period of disqualification.
4. As the matter was contested, there is no credit for a guilty plea. Ben has been a trainer for about 20 years. He has had a long family involvement in the industry. His partner, Ms Lyn Smith, currently has about 75 greyhounds under her care and control. The past two years of suspension must have been extremely frustrating for Ben. He is otherwise of excellent character. In setting a penalty, we have had regard to the above matters, but more significantly, to the concepts of general deterrence, denunciation, just punishment and animal welfare considerations. Also important is the preservation of the good name of the industry, which has been somewhat restored following the nadir which was the live baiting scandal approximately six years ago. Ben’s limited involvement and apparent acquiescence in his father’s conduct must be viewed as significant aggravating factors.
5. For this offence, we impose a penalty of five years disqualification, commencing on 7 November 2019, with one year of that period suspended for three years pending no further breach of any Rule of greyhound racing relating to live baiting. Counsel for Ben requested that we impose a condition on the disqualification which permits Ben to assist with the toileting and feeding of Ms Smith’s greyhounds. Counsel for Greyhound Racing Victoria (“GRV”) did not speak in opposition to this course. We consider that it would be a good way to rehabilitate Ben back into the industry and relieve what must have been great pressure on Ms Smith over the last two years. Accordingly, we formally order that from today’s date the disqualification be subject to the condition that Ben be permitted to assist Ms Smith with the toileting and feeding of her greyhounds at her registered kennel address.
6. On the charge under GAR 86(d), namely misleading the Stewards, we impose a penalty of six months disqualification, but make it wholly concurrent with the penalty under LR 42.23, as it arose out of the same general course of conduct relevant to the breach of that subrule. General deterrence demands a significant penalty. The work of the Stewards is hard enough without registered participants being untruthful to them.

Mark Howard  
Registrar, Victorian Racing Tribunal