25 March 2021

**GREYHOUND RACING VICTORIA**

**and**

**MR BRADEN FINN**

**Date of hearing:** 23 March 2021

**Panel:** Justice Shane Marshall (Deputy Chairperson).

**Appearances:** Mr Patrick Considine appeared on behalf of the Stewards

Mr Michael Bailey appeared on behalf of Mr Finn.

**Charges and particulars:**

**Charge No. 1 of 4**

**Greyhounds Australasia Rule 83(2)(a)** which reads as follows:

**GAR 83 Greyhound to be free of prohibited substances**

*(2) The owner, trainer or person in charge of a greyhound*

 *(a)**nominated to compete in an Event;*

*(b) presented for a satisfactory, weight or whelping trial or such other trial as provided for pursuant to these Rules; or*

*(c) presented for any test or examination for the purpose of incapacitation or prohibition being varied or revoked*

 *shall present the greyhound free of any prohibited substance.*

**Particulars of the Charge being:**

1. You were:
	1. at all relevant times prior to 26 February 2020 and after 3 March 2020, a public trainer/breeder licensed by Greyhound Racing Victoria (licence number 42696);
	2. further and alternatively, at all relevant times prior to, during and after the period between 26 February 2020 and 3 March 2020, a person otherwise bound by the Greyhound Australasia Rules and Local Racing Rules.
2. You were:
	1. at all relevant times prior to 26 February 2020, the trainer of "More Deductions" (VHTFK);
	2. further and alternatively, at all relevant times prior to, during and after the period between 26 February 2020 and 3 March 2020, the person in charge of "More Deductions" (VHTFK).
3. "More Deductions" was nominated to compete in Race 6 at the Geelong Greyhound meeting on 28 February 2020 (**the Event**).
4. On 28 February 2020, "More Deductions" was presented at the Event not free of any prohibited substances, given that:

(a) A pre-race sample of urine was taken from "More Deductions" at the Event (V647566);

(b) Benzoylecgonine was detected in the Sample.

1. You were responsible for presenting "More Deductions" to the Event in breach of GAR 83(2)(a) in that:
	1. "More Deductions" was presented to the Event in accordance with and furtherance to your plan to that effect, agreed to with Mr Lachlan Vine shortly prior to your licence expiring on 26 February 2020, and while you were still the registered trainer of "More Deductions";
	2. further and alternatively, you were the person in charge of "More Deductions" on 28 February 2020 and it was brought to and competed in the Event at your instruction and direction.

**Charge No. 2 of 4**

**Greyhounds Australasia Rule 79A(4)** which reads as follows:

**Rule 79A Out of Competition Testing**

*(4) When a sample taken from a greyhound being trained by a licensed trainer or in the care of a registered person has been found to contain a Permanently Banned Prohibited Substance specified in sub-rule (2),*

*i. the trainer and any other person who was in charge of such greyhound at the relevant time shall be guilty of an offence.*

*ii. the greyhound shall be disqualified from any Event or any benefit derived from a trial or test for which it was nominated at the time the sample was taken.*

*iii. the greyhound may be disqualified from any Event in which it has competed subsequent to the taking of such sample where in the opinion of the Stewards, the Permanently Banned Prohibited Substance was likely to have had any direct and / or indirect effect on the greyhound at the time of the Event.*

**Particulars of the Charge being:**

1. You are and were at all relevant times, including on and around 15 April 2020, a public trainer/breeder licensed by Greyhound Racing Victoria (licence number 42696) and a person bound by the Greyhound Australasia Rules and Local Racing Rules (**the Rules**).
2. A sample was taken from "More Deductions" (VHTFK) as part of Out of Competition Testing conducted at your registered kennels on 15 April 2020 (**the Sample**).
3. You were at all relevant times, including on and in the days prior to 15 April 2020, the trainer, further and alternatively, the person in charge of "More Deductions".
4. The Sample was found to contain one or more Permanently Banned Prohibited Substances, within the meaning in the Rules, in that Cocaine, Benzoylecgonine and Ecgonine methyl ester were detected in the Sample.

**Charge No. 3 of 4**

**Greyhounds Australasia Rule 83(2)(a)** which reads as follows:

**GAR 83 Greyhound to be free of prohibited substances**

*(2) The owner, trainer or person in charge of a greyhound*

 *(a)**nominated to compete in an Event;*

*(b) presented for a satisfactory, weight or whelping trial or such other trial as provided for pursuant to these Rules; or*

*(c) presented for any test or examination for the purpose of incapacitation or prohibition being varied or revoked*

 *shall present the greyhound free of any prohibited substance.*

**Particulars of the Charge being:**

1. You are and were at all relevant times a public trainer/breeder licensed by Greyhound Racing Victoria (licence number 42696) and a person bound by the Greyhound Australasia Rules and Local Racing Rules.
2. You were at all relevant times, including on and immediately prior to 10 May 2020, the trainer, further and alternatively, the person in charge of "Brace and Bits" (VHUDD).
3. "Brace and Bits" was nominated to compete in Race Seven (7) at the Sale Greyhound meeting on 10 May 2020 (**the Event**).
4. On 10 May 2020, "Brace and Bits" was presented by you at the Event not free of any prohibited substances, given that:

(a) A sample of urine was taken from "Brace and Bits" at the Event (V661457);

(b) Benzoylecgonine was detected in the Sample.

**Charge No. 4 of 4**

**Greyhounds Australasia Rule 86(o)** which reads as follows:

**GAR 86 Offences**

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

*(o) has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;*

**Particulars of the Charge being:**

1. You were:
2. at all relevant times prior to 26 February 2020 and after 3 March 2020, a public trainer/breeder licensed by Greyhound Racing Victoria (licence number 42696);
3. further and alternatively, at all relevant times, prior to, during and after the period between 26 February 2020 and 3 March 2020, a person otherwise bound by the Greyhound Australasia Rules and Local Racing Rules.
4. On 25 February 2020 you transferred the greyhound "More Deductions" (VHTFK) into the name of registered public trainer Lachlan Vine (243284) who is a friend which resided at the same address as you.
5. You did this as your GRV registration was due to expire on 26 February 2020.
6. You continued to train and care for the greyhound, "More Deductions", while it was registered with Lachlan Vine, including during the period between 26 February 2020 and 3 March 2020.
7. "More Deductions" was nominated for, competed and placed second in Race Six (6) at Geelong on 28 February 2020 (**the Event**).
8. On 3 March "More Deductions" was transferred back into your name once your registration had been renewed.
9. In participating in these actions, you have done a thing or engaged in conduct which in the opinion of the Stewards is:
	1. dishonest;
	2. fraudulent;
	3. improper; and / or
	4. further and alternatively, constitutes misconduct;

in that it misled the betting public as to who was the person training, and in charge of, the greyhound "More Deductions" between 25 February 2020 and 3 March 2020 and at the time it competed in the Event.

**Plea:** Reserved

**DECISION – APPEAL OF SUSPENSION**

1. On 16 March 2021, Mr Finn filed a notice of appeal with the Registrar of the Tribunal from the decision of the Stewards to suspend his registration as a trainer on 21 May 2020, affirmed on 25 May 2020.
2. Mr Finn faces 4 charges which are due to be heard by the Tribunal on 3, 4 and 5 May 2021, some 6 weeks away. Two are presentation charges under Greyhounds Australasia Rule (GAR) 83(2). The other two charges are one under GAR 79A(4) concerning an out of competition sample and the other is a dishonesty charge under GAR 86(o). Mr Finn informed Stewards that the sampling matter may have arisen from cross contamination from his personal use of cocaine.
3. Mr Finn was advised of his suspension by letter dated 21 May 2020 from Greyhound Racing Victoria (“GRV”). The letter foreshadowed three possible prohibited substance related charges and a charge under GAR 86(q) concerning conduct detrimental to the interests of greyhound racing. The later charge was never laid. Instead, a similar one relating to misconduct under GAR 86(o) was laid. The letter noted the previous 6 months cocaine related disqualification in 2016. Having regard to three urine samples associated with greyhounds trained by Mr Finn recently showing positive swabs to cocaine, Stewards said that there was prima facie evidence of serious breaches of the Rules of Racing.
4. The suspension was imposed, in the words of the letter, “in order to protect the integrity of the sport of greyhound racing”. The suspension was described as “temporary” and subject to Mr Finn showing cause as to why he should not remain suspended. Further information was required from Mr Finn by GRV to be supplied by Mr Finn by 25 May 2020.
5. On 25 May 2020, Investigations Manager of GRV, Mr Simon McLean (also the author of the 21 May 2020 letter) wrote to Mr Finn saying that he had received a reply to his 21 May 2020 letter concerning Mr Finn’s personal circumstances, including his intention to wear gloves when handling his greyhounds in the future.
6. Mr McLean expressed concern about the substance being detected as a category 4 substance, which was a reference to the seriousness of cocaine in a previous GRV penalty guidelines document; Mr Finn’s admission as a user of cocaine; and the likely penalty being disqualification if a guilty finding was made. Mr McLean stated that the suspension would remain pending a hearing before the Tribunal. Largely due to restrictions imposed due to COVID-19 and a request for a three month adjournment by Mr Finn, the charges were not listed for hearing until 3 May 2021.
7. At a directions hearing on 25 August 2020, a hearing of an appeal against the Stewards decision to suspend Mr Finn was programmed for 10 September 2020, thereby vacating a proposed hearing date for the four charges on 10 September 2020. Mr Finn did not pursue any appeal against his suspension on 10 September 2020 or at a further directions hearing on 22 September 2020. The issue of the suspension of Mr Finn was raised again by his advocate Mr Bailey, earlier this month and was intended to be dealt with by Mr Bailey at a directions hearing until the Tribunal informed him that an appeal in proper form would need to be filed. At that stage, attention had not been drawn by either party or the Tribunal to the provisions of Section 50K (2)(b) of the Racing Act 1958 (Vic)(“the Act”) which provides that:

“An appeal under subsection 1 must:

(b) be lodged with the Victorian Racing Tribunal Registrar by 5.00pm on the third day after the appellant receives notice of the decision made under the Rules to impose a penalty”

I emphasise the word “must”.

Nor had attention been drawn to Section 50N of the Act which permits the granting of leave to appeal out of time providing the requirements of Section 50N (a) and (b) had both been met.

1. The initial suspension decision was temporary and not affirmed until 25 May 2020. If Section 50K(2)(b) is construed as mandatory, the appeal needed to be filed by 5.00pm on 28 May 2020.
2. In setting down the appeal under Section 50K(1)(a) of the Act for hearing, the Tribunal required the parties to address three issues.
3. Is the appeal competent such that the Tribunal has jurisdiction to deal with it?;
4. If there is a right to seek an extension of time within which to lodge the appeal, should such an extension be given?; and
5. If an extension is given, should the appeal be allowed?.

I now turn to these issues.

1. The answer to issue 1 is that the Tribunal has jurisdiction in accordance with Section 50N of the Act to extend the otherwise mandatory requirement in Section 50K(2)(b) of the Act to file an appeal by 5.00pm on the third day after the suspension was imposed.
2. The answer to issue 2 is that the Tribunal should not grant leave for an extension of time within which to bring an appeal. That is because the Tribunal is:-
* Not of the opinion that Mr Finn has provided a satisfactory explanation for his failure to file the appeal within the time specified in Section 50K - see Section 50N (a); and
* Does not consider it would be unjust to refuse leave to file an appeal out of time - see Section 50N (b).
1. There is no evidence before the Tribunal of any explanation, let alone a satisfactory one, for the failure to bring the appeal within the time specified in Section 50K(2)(C) - that is, the three days following the decision to suspend him on 25 May 2020.
2. Further, there is no injustice in refusing to extend time within which to appeal. The substantive hearing is scheduled to be heard in about 6 weeks. Mr Finn was offered an opportunity to have his appeal heard in September 2020 and declined to take up that opportunity.
3. In addition, Mr Finn’s licence has expired. He has indicated through Mr Bailey in previous directions hearings that he has no intention of returning to training at least in the short term. The requirement under Section 50N (b) must be made out as well as the requirement under Section 50N(a) in any event. The provisions are cumulative, not alternative.
4. In the event that I am wrong in refusing leave to extend time in which to appeal, I would in any event dismiss the appeal. The decision of the Stewards made under Local Racing Rule 11.14 was open to them. There was prima facie evidence (albeit untested) that Mr Finn had breached the rules relating to prohibited substances. It is irrelevant that an apprehended breach of GAR 86(q) was raised, but not proceeded with by way of a charge.
5. Mr Bailey otherwise raises the fact that Rule 79A breaches are not serious offences. However, Mr Finn faced the likelihood of two charges which were serious offences. The other arguments go to possible defences to be raised in the substantive proceedings which are only 6 weeks away and can be fully dealt with then.
6. Mr Bailey also raised the delay of three months in bringing the charges. This is irrelevant to whether the suspension is removed. GRV is entitled to take sufficient time and care to bring what were three serious charges and one related charge. Further, at that time, Mr Finn had indicated a desire to step away from training greyhounds. Mr Bailey also referred to the amendment to the charges permitted by leave of the Tribunal. This is also irrelevant to whether the suspension should be lifted. If anything, the provision of more detail about what the Stewards are alleging against Mr Finn can only assist him and not harm his defence. In any event, several months will have passed between the provision of the revised particulars and the commencement of the hearing of the charges on 3 May 2021.
7. In conclusion and summary, the Tribunal holds as follows:
8. The appeal is competent, subject to leave being granted to extend time.
9. Leave to extend time within which to appeal is refused.
10. Should leave had been given to extend the time within which to being a competent appeal, that appeal should have been dismissed.

Nothing in these reasons is intended to express any view about whether or not Mr Finn is guilty of any of the four charges alleged against him, which will be the subject of the hearing commencing on 3 May 2021.

Mark Howard
Registrar, Victorian Racing Tribunal