28 May 2021

**GREYHOUND RACING VICTORIA**

**and**

**MR BRADEN FINN**

**Date of hearings:** 3 May 2021 and 5 May 2021

**Panel:** Judge John Bowman (Chairperson), Justice Shane Marshall (Deputy Chairperson) and Judge Marilyn Harbison.

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

Mr Damien Sheales represented Mr Braden Finn.

Mr Kirk Branton appeared as a witness.

**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.

**Pleas:** Guilty to charges 2 and 3.

Not Guilty to charges 1 and 4.

 Charge 4 was withdrawn by the Stewards.

**DECISION – CHARGE 1**

1. Mr Braden Finn is a registered greyhound trainer, whose licence was suspended by Stewards of Greyhound Racing Victoria (“GRV”) on 25 May 2020 pending the hearing and determination of four charges laid against him. At a hearing commencing on 3 May 2021, Mr Finn pleaded guilty to two of those charges, one charge was withdrawn by the Stewards and another charge was dismissed by the Tribunal. The remaining charges are the subject of this decision.
2. Charge 1 is under Greyhounds Australasian Rule (“GAR”) 83(2). That sub-rule provides that (so far as is material):

“The owner, trainer or person in charge of a greyhound

1. nominated for an event…

shall present the greyhound free of a prohibited substance”.

1. The particulars of the charge allege that:
* Mr Finn was a trainer/breeder at all relevant times prior to 26 February 2020 and after 3 March 2020;
* Mr Finn was at all relevant times between the above dates a person otherwise bound by the GARs and the Local Racing Rules;
* At all material times prior to 26 February 2020, Mr Finn was the trainer of the greyhound, “More Deductions”; and
* At all relevant times prior to, during and after the above dates, Mr Finn was a person in charge of “More Deductions”.
1. More Deductions competed in race 6 at Geelong on 28 February 2020. A pre-race sample of urine taken from the greyhound showed the presence of benzoylecgonine, a metabolite of cocaine.

1. At the time of the event, the registered trainer of More Deductions was Mr Lachlan Vine. Mr Vine was a friend of Mr Finn. He held a trainer’s licence as at 26 February 2020. At that time Mr Finn’s licence had expired and had not been renewed. It was not renewed until 3 March 2020.
2. In a preliminary inquiry conducted by Stewards of GRV on 17 April 2020 Mr Vine gave the following evidence:
* At the relevant time, Mr Vine lived at an address in Devon Meadows, which was also the kennel address for Mr Finn.
* Mr Vine had only been a trainer for a few months before the Geelong event.
* Apart from being the registered trainer of More Deductions from 26 February 2020 to 3 March 2020, he had not been the registered trainer of any greyhound or been involved in the actual training of any greyhound.
* He said that More Deductions was transferred into his name because Mr Finn’s licence had expired and Mr Finn wanted the greyhound to race on 28 February 2020.
* Mr Vine said that he did not see More Deductions.
* Mr Finn asked him to have the greyhound transferred into Mr Vine’s name on 24 February 2020 or 25 February 2020.
* Mr Vine said that Mr Finn was “continuing to train the dog but just in my name until his licence came back”.
* Mr Vine said that he had no involvement in relation to the greyhound attending the Geelong track on 28 February 2020.
* He said that someone called Mr Matty Hobey who helps Mr Finn out transported the greyhound to Geelong and someone called Glenn Tallarico handled the dog.
* He made sure that Mr Finn did not go anywhere near the dog on the day of the race because Mr Finn was on drugs. He made sure Mr Finn stayed inside and that Matty handled the dog, got it out and was ready to go to the track. Matty drove the dog to the track and picked Glenn up on the way. Glenn is a registered handler (attendant).
* Mr Vine said that he would not allow Mr Finn anywhere near the dog. He said that, as the registered trainer, it was his responsibility to get the dog to the track. Mr Vine also said that Mr Finn had organised “absolutely everything”.
* Mr Vine stayed home with Mr Finn on race day.
* Mr Vine said that he had nothing to do with “the regime of the greyhounds” at the Devon Meadows property.
1. In a preliminary inquiry conducted by GRV Stewards on 1 May 2020, Mr Finn gave the following evidence:
* Mr Finn said that Mr Matthew Hobey helps him out but is not a registered participant. He drives the dogs to the track
* Mr Finn said “he would have” asked Mr Hobey to take the dog to Geelong and “he would have” organised a handler “attendant”, but that he could not remember. He said that Mr Hobey might have organised the handler, Mr Tallarico.
* Mr Finn’s licence expired on 24 or 25 February 2020, although he paid for the renewal before it expired and he had to wait for his renewal to be approved at a monthly meeting of the GRV Board.
* The Chairman of the Stewards inquiry asked Mr Finn what he described as leading questions containing inappropriate, inaccurate assumptions to which Mr Finn agreed. He said that Mr Finn had said that he got Mr Hobey to take the dog to the races and that he or Mr Hobey organised a handler. Mr Finn had said no such thing. He said that he could not remember and that he “probably would have”.
* He put More Deductions into Mr Vine’s name so that the dog could race. He said that it was intended that the dog would be transferred back into his name after his licence was renewed.
* Mr Vine helped out with the greyhounds, but his involvement was minimal.
* Mr Finn was not training at the time of the race because he was unlicensed.
* Mr Finn said that his memory was very poor.
1. From the above evidence, the following findings of fact are made:

* Mr Finn was the registered trainer of More Deductions until 26 February 2020.
* On 26 February 2020, Mr Vine became the registered trainer of More Deductions.
* Between 26 February 2020 and 3 March 2020 Mr Finn had nothing to do with More Deductions.
* Mr Vine agreed to be the registered trainer of More Deductions until Mr Finn obtained his licence again.
* Although the registered trainer, Mr Vine did not engage in any training activities involving More Deductions.
* Mr Vine did not attend the track on 28 February 2020. He stayed home with Mr Finn.
* Mr Hobey took the greyhound to the track on 28 February 2020 and Mr Tallarico handled the dog. It is unclear whether this was at the request of Mr Finn or Mr Vine. Mr Finn said that he had no involvement in the training of More Deductions from 26 February 2020. He has a poor memory of the events of that day due to health related reasons, including drug abuse. No firm finding can be made as to whose instructions Mr Hobey and Mr Tallarico were acting under. However, we observe that Mr Vine accepts that he was responsible for getting the dog to the track as the registered trainer. He said that he made sure Mr Finn did not go near the dog on the day of the race and that Mr Hobey handled it. We note that Mr Hobey’s role was confined to driving the dog to the track and Mr Tallarico handled and kennelled the dog.
1. GRV Stewards contend that Mr Finn is guilty of breaching GAR 83(2) because he was the person in charge of More Deductions and presented the greyhound not free of a prohibited substance.
2. “Person in charge” is not defined to in the GARs. The word “attendant” is defined to mean a person registered by GRV other than a registered owner or trainer, “who is authorised to physically be in charge of a greyhound whilst such greyhound is on the premises of a club for racing”. However, an attendant who takes a greyhound to the track under the instructions of a registered trainer who has the ultimate control of the greyhound will not be the person in charge in those circumstances.
3. Ordinarily a registered trainer will present a greyhound trained by himself or herself for an event. Less frequently it may be a registered owner in the absence of a trainer, but more frequently an attendant who kennels and handles the greyhound at the track. That can be done under the control of the registered trainer, who is ultimately responsible for the presentation of the greyhound. Even when an attendant kennels and handles the dog at the track, it may be that a trainer has delegated the presentation to the attendant.
4. In referring to “a person in charge”, GAR 83(2) contemplates a person in charge of the greyhound at the track who is not necessarily an owner of the greyhound or the trainer of the greyhound. It does not contemplate a situation where someone who has trained a greyhound ceases to train it temporarily, has no involvement in its training before a race and does not present the greyhound to compete in the event. Rather the reference to “person in charge” is intended to describe the person who has the care and control of the greyhound at the track and physically presents it to race or a person under whose control a greyhound was presented. Mr Finn was not such a person in respect of More Deductions. He had nothing to do with the greyhound from 26 February 2020 to 28 February 2020. He was kept away from the greyhound by Mr Vine on the day before the race. We note that GAR 1 defines presentation as including the time from the scratching time for an event to removal from the racecourse on the day. The scratching time for the Geelong event was 9.00am on 28 February 2020. Mr Finn had no involvement with the greyhound from the day before then until the end of 28 February 2020. Mr Finn did not present the greyhound. Mr Vine had the right to scratch the greyhound as the registered trainer.
5. Counsel for GRV contended that an interpretation of the sub-rule which excludes culpability for someone who may be carefree about presenting a dog to race with a prohibited substance in its system may result in such a person escaping penalty by temporarily transferring the dog to another trainer. If those facts were able to be established, there are other Rules in the GARs which would penalise such conduct and impose potentially severe penalties. Examples are under GAR 86(o) and GAR 86(q).
6. It is noteworthy that GRV has charged Mr Vine under GAR 83(2) as the trainer of More Deductions. Mr Vine as the trainer was, as he said, ultimately responsible for presenting the greyhound for the event. As GRV Investigative Steward, Mr Kirk Branton, agreed, Mr Vine had the power to scratch the dog from the event, resulting in it not being presented to race.
7. For the foregoing reasons, we consider that Mr Finn was not a person answerable to GAR 83(2) at the time More Deductions was presented to race at Geelong. He was not an owner, not the registered trainer and not the person in charge of the greyhound. We find Charge 1 not proven to our comfortable satisfaction. Mr Finn is not guilty of that charge. We dismiss it.

**DECISION – CHARGES 2 and 3**

1. Mr Braden Finn is a registered greyhound trainer and, at all material times, was the trainer of the greyhounds, "More Deductions" and "Brace and Bits" for the purposes of these charges.
2. On 15 April 2020, Stewards of Greyhound Racing Victoria ("GRV") conducted an out of competition urine test on the More Deductions. The sample was found to contain cocaine, benzoylecgonine ("BZE") and Ecgonine Methyl Ester ("EME").
3. On 10 May 2020, Mr Finn presented Brace and Bits to race in race 7 at Sale. Brace and Bits competed in the event and finished in first place. The prizemoney was $1,650. A post-race swab showed the presence of BZE.
4. Cocaine and its metabolites BZE and EME are prohibited substances and permanently banned substances under the Greyhound Australasian Rules ("GAR"). They are substances which are capable of causing an action or effect on the nervous system and cardiovascular system. They are stimulants.
5. Cocaine and BZE are specifically listed as permanently banned substances under GAR 79A (2) and EME is a permanently banned substance as a metabolite of cocaine. Cocaine is also a prohibited substance as defined in Sch 9 to the Commonwealth Standard for Uniform Scheduling of Drugs and Poisons as a substance capable of abuse or misuse, the manufacture, possession or sale of which is prohibited by law.
6. Cocaine is extracted from coco plants and is used as a recreational drug. It has a potent effect on the central nervous system. Its stimulating effects include euphoria, mood elevation and a decreased sense of fatigue. It is capable of affecting the condition and performance of a greyhound, with any effect more likely to be positive, such as by reducing fatigue.
7. Mr Finn has pleaded guilty to charges two and three. Several directions and other interlocutory hearings have been held since the original directions hearing shortly after the laying of the charges. Mr Finn maintained a plea of not guilty until the first day of a scheduled contested hearing. He then pleaded guilty to the two charges.
8. He pleaded not guilty to another charge and the Stewards withdraw a third charge. A contested hearing was required on one charge in relation to which Mr Finn was found not guilty. The guilty plea on the charges the subject of this decision came immediately after Mr Finn obtained competent legal advice.
9. At the time of the offences Mr Finn was a regular user of cocaine. He gave evidence that, at that time, his life was out of control. He has made progress in recent months in overcoming his dependency on cocaine. However, he has had and continues to have mental health issues and suffers from depression.  The positive swabs in these matters appear to have been caused by inadvertent contamination from Mr Finn's cocaine use.
10. In setting penalties in these matters, we take into account general and specific deference. We also take into account the public interest in keeping a level playing field by maintaining a drug free industry. We have also considered previous penalties in like matters and the guilty plea, albeit a late guilty plea. We further take into account a prior offence by Mr Finn in respect of BZE in 2016.
11. We also have regard to the penalty guidelines document prepared by GRV in 2019 concerning prohibited substances. We are informed by those guidelines, but are not bound by them. The guidelines draw a distinction between permanently banned prohibited substances and other prohibited substances. The guidelines at page 6 state: "Permanently banned substances are a group of prohibited substances that are so concerning from a welfare and integrity perspective that they are deemed to have no place in the sport at all. These substances cannot be in a greyhound's system at any time - i.e. not only are they banned on race day but also cannot be present in an out of competition sample." The guidelines then state that: "Prohibited substances [other than permanently banned ones] can be possessed providing that it is done so in accordance with the rules... They can be administered where reasonably indicated but must not be detected in a sample when a greyhound is presented for an event..."
12. The guidelines recommend a minimum penalty of 12 months' disqualification and a $2,500 fine for breach of GAR 83 (2) when the prohibited substance is a permanently banned substance. Other examples of permanently banned substances referred to in the guidelines, apart from cocaine, include EPO, Growth Hormones, Amphetamines, Methamphetamines, Morphine, Oxycodone, Ketamine, peptides and anabolic steroids.
13. We have no doubt from our experience in dealing with prohibited substance cases that they are more serious, more harmful to greyhounds and more likely to affect the result of a race than other prohibited substances such as caffeine, procaine, arsenic and the like. Penalties in cases involving permanently banned substances have consistently been high and, in some cases, much higher than cases not involving permanently prohibited substances. This has been so before this Tribunal and before the Greyhound RADB.
14. On behalf of Mr Finn, counsel submitted that the rules do not permit a distinction between permanently banned and other prohibited substances. Counsel contended that the penalties should be informed by those given in all other matters determined by the Tribunal, including cases not involving permanently banned prohibited substances.
15. Counsel referred the Tribunal to DPP (Cth) v Brown [2017] VSCA 162 in support of that submission. In Brown, the Court of Appeal said that the sentencing regime for drug importation was quantity and did not depend on the drug involved. There is no warrant for taking such an approach to the GARs. Permanently banned substances are mentioned in the GARs for a reason. That reason is to inform licensed persons that positive swabs to substances of that sort will be treated more seriously than other prohibited substances.

Counsel also referred to Pidoto v O’Dea [2006] VSCA 105, where the Court of Appeal referred to the fact that the drug trafficking offence concerned was created as a standardised offence across "the range of drugs of dependence" by specifying "a commercial quantity" for each drug in question. What was critical in sentencing in that matter was the quantity of the drug trafficked and not the seriousness of the drug. For reasons which follow, we consider that Brown and Pidoto can be distinguished in the circumstances of the GARs, having regard to the seriousness of permanently banned substances as reflected in their treatment in the GARs.

1. Under GAR 79A(3) a greyhound giving a sample which contains a permanently banned substance must be withdrawn from an event it is nominated for and shall be ineligible to be nominated for a further event until a sample is taken that does not breach the Rule. Under GAR 79A(4)(iii) a greyhound disqualified from an event due to having a positive swab to a permanently banned substance may be disqualified from a subsequent event the greyhound has run in where the Stewards consider that the substance may have had an effect on the greyhound. No such comparable provision is made in the case of prohibited substances which are not permanently banned.
2. In our view we are entitled to consider a positive swab to cocaine as a very serious matter, usually deserving of a period of disqualification, depending on the individual circumstances. We are not, in any event, bound by principles relevant to an approach to criminal sanctions as opposed to those imposed in a disciplinary case as civil penalties. However, the distinction is not of any great importance in this matter.
3. Having regard to Mr Finn’s previous cocaine related offence in 2016, to which he pleaded not guilty, and his penalty of 12 months disqualification with 6 months suspended, we consider that a period of disqualification is warranted in this case.
4. In 2016, Mr Finn was sentenced more lightly than he might otherwise have been, given that it was his first serious offence. He forfeited prize money in a million dollar race. Further, he was a professional punter by occupation who would be deprived of his living for any period of disqualification.
5. On the other hand, in the instant matter there is a guilty plea, albeit late. We note that at the time of this offending Mr Finn was in poor health, experiencing cocaine addiction and lacking judgment and care. We note the effort that he is making to overcome his addition and wish him success in that regard.
6. In all the circumstances on the charge under GAR 83(2), we disqualify Mr Finn for 18 months with effect from 25 May 2020, but suspend 6 months of that period pending no further breach of GAR 83 in the next 24 months. In addition, we disqualify Brace and Bits from race 7 at Sale on 10 May 2020.
7. On the charge under GAR 79A, we suspend Mr Finn for 6 months, but fully suspend that suspension for a period of 12 months pending no further breach of GAR 79A in the next 12 months. We impose such penalty, bearing in mind that this offence is not classified as a serious offence in the GARs and was close in time to the offence under GAR 83(2). The offence may be considered part of the same course of conduct due to Mr Finn’s cocaine addiction at that time.
8. We formally find each of the 2 charges proven to our comfortable satisfaction and impose the above penalties.

Mark Howard
Registrar, Victorian Racing Tribunal