26 May 2021

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**CASSANDRA O’BRIEN**

**Date of hearing:** 30 April 2021

**Panel:** Judge John Bowman (Chairperson) and Ms Maree Payne.

**Appearances:** Mr Andrew Cusumano appeared on behalf of the Stewards.

Mr Julian Dwyer represented Ms Cassandra O’Brien.

**Charges:** Australian Harness Racing Rule (“AHHR”) 196A (1) states:

“A person shall not administer or cause to be administered to a horse any prohibited substance

(i) for the purpose of affecting the performance or behaviour of a horse in a race or of preventing its starting in a race; or

(ii) which is detected in any sample taken from such horse prior to or following the running of any race.”

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

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

**Particulars of charges: Charge 1**

1. On 22 March 2020, the horse ‘Graceful Art’ was presented to race at the Ouyen harness racing meeting in Race 4, the ‘Nutrien AG Solutions Pace’;

2. At the relevant time you were the trainer of ‘Graceful Art’;

3. Prior to Race 4, the ‘Nutrien AG Solutions Pace’, a blood sample was collected from ‘Graceful Art’ with subsequent analysis of that sample revealing a plasma total carbon dioxide (TCO2) concentration of 38.0 mmol/L;

4. As the trainer of ‘Graceful Art’, you administered or caused to be administered an alkalinising agent(s) to ‘Graceful Art’, for the purpose of affecting the performance of ‘Graceful Art’ in Race 4, the ‘Nutrien AG Solutions Pace’, at Ouyen on 22 March 2020.

**Charge 2 (Alternative to charge 1)**

1. On 22 March 2020, the horse ‘Graceful Art’ was presented to race at the Ouyen harness racing meeting in Race 4, the ‘Nutrien AG Solutions Pace’;

2. At the relevant time you were the trainer of ‘Graceful Art’;

3. Prior to Race 4, the ‘Nutrien AG Solutions Pace’, a blood sample was collected from ‘Graceful Art’ 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 ‘Graceful Art’ on 22 March 2020, you presented that horse to race in the ‘Nutrien AG Solutions Pace’ at Ouyen 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.

**Pleas:** Not Guilty to charge 1

Guilty to charge 2

**DECISION – CHARGE 2**

Ms Cassandra O’Brien, you have pleaded “guilty” to a breach of AHHR 190 (1). It involves the horse Graceful Art, which competed in race 4 at Ouyen on 22 March 2020. Graceful Art won the race. A pre-race blood sample revealed the presence of TC02 with a concentration of 38 millimoles per litre in plasma, which is in excess of the legal limit. This is the presentation charge.

Stewards had also charged you with a breach of AHRR 196A (1) – in essence, administration. You pleaded not guilty to that charge, which resulted in a contested hearing before this Tribunal. The outcome was that the administrative charge was dismissed, with the alternative charge of the presentation remaining on foot.

Of particular relevance to this is that many features of your background, especially of your enormous health battles as set out in the decision in the administration case. We would refer to that decision, which can be found on the Tribunal’s website. That contains many details of your family background, training arrangements and the like. We shall not set them all out again in this decision.

One aspect of that decision that we shall repeat is that Graceful Art had been the subject of the HRV Elevated TC02 Levels Policy on two occasions. In other words, it twice returned race day readings in excess of 35, but less than 36. Each time this made it the subject of pre-race and post-race testing for its next three starts. Sixteen days after the second test period expired, the reading at Ouyen on 20 March 2020 occurred. All of this occurred in the early months of you having obtained your B trainers’ licence.

We would refer to the problems which you were having with a particular uncle who is also in the industry. Effectively you moved the two horses that you were then training to new premises so as to be some distance from him. That is not to say that he was responsible for these readings. It is only to highlight that some problems existed which resulted in you moving.

When you moved to new premises, you should have taken all frequently used precautions in relation to security. You apparently discussed it prior to moving to the property about installing security cameras but that was not done. It has since been done. Further, you have since moved the two horses that you train away from the stables which were near the road and positioned them behind the house of the owners of the property. These were steps that should have been taken earlier, particularly when your horses had returned two readings which were in excess of 35 and had been subject to the elevated levels policy. Perhaps your inexperience contributed to this. This is certainly something that should have put you on alert and caused you to seek advice and take appropriate steps.

You are 25 years of age. You recently obtained a nursing position, which is effectively part-time due to your enormous health problems, which are ongoing. You have been hospitalised again very recently. We would refer again to our recent decision and the details contained therein. You are currently training two horses. Graceful Art has retired. We appreciate how important the horses are to you. You are also actively involved in the industry.

Balancing all these matters up and bearing in the mind the decisions in two recent relevant cases (the decisions in Taiba and Grasso), we are of the view that a period of suspension is appropriate. We appreciate that the serious offence guidelines refer to 18 months disqualification. The Stewards are seeking a period of suspension of 12 months. That is some indication of the gravity of such offences. They are offences which undermine the concept of a level playing field. The presence of prohibited substances such as TC02 can destroy confidence in the integrity of the industry.

As stated, we are of the view that a period of suspension is required. We impose a period of suspension of 12 months. However, bearing in mind, your almost unique circumstances, the matters set out above and the previous decisions in similar cases, we are of the view that a substantial portion of that 12 month period should in turn be suspended. The end result is that you are suspended for 12 months, with 9 months of that period in turn suspended for 24 months. If you breach this Rule again in the 24 month period, the balance of the 12 month suspension becomes operative. The suspension shall commence immediately.

Graceful Art is disqualified from race 4 at Ouyen on 22 March 2020 and the finishing order is amended accordingly.

Mark Howard
Registrar, Victorian Racing Tribunal