15 March 2021

**DECISION**

**GREYHOUND RACING VICTORIA**

**and**

**COLIN O’DONNELL**

**Date of hearing:** 18 February 2021

**Panel:** Magistrate John Doherty (Deputy Chairperson) and Ms Judy Bourke.

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

Mr Colin O’Donnell represented himself.

Mr Kirk Branton appeared as a witness.

Dr Gavin Gobel appeared as a witness.

**Charges:** Greyhounds Australasia Rule (“GAR”) 106(1)(c) states:

(1) A registered person must ensure that greyhounds, which are in the person’s care or custody, are provided at all times with –

(c) Kennels constructed and of a standard approved by the Controlling Body which are adequate in size and which are kept in a clean and sanitary condition.

GAR 106(1)(d) states:

(1) A registered person must ensure that greyhounds, which are in the person’s care or custody, are provided at all times with –

(d) Veterinary attention when necessary.

GAR 106(2) states:

A registered person must exercise such reasonable care and supervision as may be necessary to prevent greyhounds pursuant to the person’s care or custody from being subjected to unnecessary pain or suffering.

GAR 86(f) states:

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

(f) engages in, publishes or causes to be published, broadcasts or causes to be broadcast, the use of any contemptuous, unseemly, improper, insulting, or offensive language, conduct or behaviour in any manner or form towards, or in relation to-

1. a Steward;
2. the committee, or a member of the committee, of a club;
3. the Controlling Body, or a member of the Controlling Body; or
4. any other person having official duties in relation to greyhound racing.

**Particulars of charges: Charge 1**

 You, being a trainer registered with Greyhound Racing Victoria (GRV), failed to provide, at all times, kennels constructed and of a standard approved by GRV which are adequate in size and which are kept in a clean and sanitary condition, in that:

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (Member No. 45778) and a person bound by the Greyhound Australasia Rules and Local Rules of Racing.
2. You did, at all relevant times, have the care or custody of the following greyhounds:
3. Unnamed black and white greyhound (Ear brand: VPR 9703);
4. Tandar Lass (Ear brand: VBJ 6529);
5. Goddess of Greys (Ear brand: NFDAL); and
6. Snakes Alive (Ear brand: NFECW) (the Greyhounds).
7. On 10 September 2019, Investigative Stewards Mr Kirk Branton and Ms Lianne Salerno attended your kennel address, namely 107 Skene Street, Lexton (the Property), and observed that there were no kennels on the Property.

**Charge 2**

You, being a trainer registered with Greyhound Racing Victoria, failed to provide veterinary attention when necessary to a greyhound that was in your care or custody, in that:

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (Member No. 45778) and a person bound by the Greyhound Australasia Rules and Local Rules of Racing.
2. You did, at all relevant times, have the care or custody of an unnamed black and white greyhound with the ear brand VPR 9703 (the Greyhound).
3. On 10 September 2019, Investigative Stewards Mr Kirk Branton and Ms Lianne Salerno attended your kennel address, namely 107 Skene Street, Lexton (the Property) and observed that the Greyhound was in pain and had poor movement.
4. On 12 September 2019, Dr Matthew Blakely of the Port Phillip Animal Hospital diagnosed the Greyhound with osteosarcoma (malignant bone cancer), and observed:
5. A loss of musculature from the left hind hip down to the foot;
6. A large swelling above the left tarsus extending into the rest of the foot;
7. Almost complete destruction of the tibia and fibia near the tarsal joint, as well as multiple pathological fractures up both bones; and
8. At least two metastases in the lungs.
9. Between on or about 12 May 2019, being the approximate date that the Greyhound commenced suffering severe pain from osteosarcoma, and 12 September 2019, being the date that the Greyhound received veterinary attention, you failed to provide veterinary attention to the Greyhound when such veterinary attention was necessary.

**Charge 3**

You, being a person registered with Greyhound Racing Victoria, failed to exercise such reasonable care and supervision as was necessary to prevent a greyhound pursuant to your care or custody from being subjected to unnecessary pain or suffering, in that:

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (Member No. 45778) and a person bound by the Greyhound Australasia Rules and Local Rules of Racing.
2. You did, at all relevant times, have the care or custody of an unnamed black and white greyhound with the ear brand VPR 9703 (the Greyhound).
3. On 10 September 2019, Investigative Stewards Mr Kirk Branton and Ms Lianne Salerno attended your kennel address, namely 107 Skene Street, Lexton (the Property) and observed that the Greyhound was in pain and had poor movement.
4. On 12 September 2019, Dr Matthew Blakely of the Port Phillip Animal Hospital diagnosed the Greyhound with osteosarcoma (malignant bone cancer), and observed:
5. A loss of musculature from the left hind hip down to the foot;
6. A large swelling above the left tarsus extending into the rest of the foot;
7. Almost complete destruction of the tibia and fibia near the tarsal joint, as well as multiple pathological fractures up both bones;
8. At least two metastases in the lungs.
9. Between on or about 12 May 2019, being the approximate date that the Greyhound commenced suffering severe pain from osteosarcoma, and 12 September 2019, being the date that the Greyhound received veterinary attention, you failed to provide veterinary attention to the Greyhound when such veterinary attention was necessary.
10. As a result of your failure to provide veterinary attention to the Greyhound between on or about 12 May 2019 and 12 September 2019, the Greyhound was subjected to unnecessary pain or suffering.

**Charge 4**

You, being a trainer registered with Greyhound Racing Victoria, did engage in the use of contemptuous, insulting or offensive language towards, or in relation to, the Controlling Body, the Stewards and other persons having official duties in relation to greyhound racing, in that:

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (Member No. 45778) and a person bound by the Greyhound Australasia Rules and Local Rules of Racing.
2. You engaged in the use of contemptuous, insulting or offensive language towards, or in relation to, the Controlling Body, the Stewards and other GRV staff in written statements published via email and Facebook, as detailed in paragraph 3.
3. The written statements were as follows:
4. On 9 September 2019, you sent an email from your account (colinodonnell62@outlook.com) to the GRV Integrity Council (integritycouncil@grv.org.au), in which you stated: “ALL GRV FAULT, PLENTY OF MONEY TO WASTE ON CORRUPT STAFF DOIN CORRUPT JOBS”;
5. On 4 October 2019, you published a post on your public Facebook page, in which you stated: “So the liars @ GRV, Who I called out, to remove 3 dogs put my dog down. They r now investigating me, wat a bunch of Crooks”.

**Pleas:** Not guilty to all charges

**DECISION**

Mr Colin O’Donnell has pleaded “not guilty” to four charges brought against him by Greyhound Racing Victoria (“GRV”).

Those charges are as follows:

Charge 1: failure to provide kennels constructed in an approved standard, breaching Greyhounds Australasia Rule (“GAR”) 106(1)(c).

Charge 2: failing to provide veterinary attention when necessary, breaching GAR 106(1)(d).

Charge 3: failing to exercise reasonable care and supervision necessary to prevent unnecessary pain or suffering, breaching of GAR 106(2).

Charge 4: engaging in, or publishing contemptuous, insulting or offensive language in relation to the controlling body, breaching of GAR 86(f).

The facts alleged against Mr O’Donnell, which give rise to charge 1 is as follows:

Mr O’Donnell is registered with GRV as a public trainer and breeder and his registered address is located in Lexton, Victoria. On 9 September 2019, GRV received an email from Mr O’Donnell requesting that GRV staff attend his property within three days of the email to remove greyhounds from his property as he could no longer afford to feed them.

On Tuesday, 10 September 2019, Investigative Stewards attended the registered address of Mr O’Donnell and identified him and four greyhounds at the property. Three greyhounds, “Tandar Lass”, “Goddess Of Greys” and “Snakes Alive” were located in the rear yard of Mr O’Donnell’s property, roaming free with no muzzles and were easily accessed via a gate. No kennels or obvious bedding was seen at that time. The fourth greyhound, known as “Pie” (VPR9703), was located inside the house and appeared to have a large swelling to its left hind leg. The greyhound appeared to be in pain and had poor movement. Mr O’Donnell said, that he was aware that Pie had cancer. He also stated that he had sought veterinary treatment, but the veterinarian provided very limited options including either removal of the left rear leg or euthanasia. After some discussion, Mr O’Donnell agreed to surrender the greyhounds to the Greyhound Adoption Program (“GAP”).

On Thursday, 12 September 2019, the Stewards, accompanied by GAP staff, returned to Mr O’Donnell’s place of residence to facilitate the surrender of the greyhounds to GAP. An inspection beforehand of the four greyhounds was conducted by the Stewards and GAP staff. On that day, Mr O’Donnell signed GAP surrender forms and surrendered all four greyhounds on his property to GAP. He was made aware that the greyhounds would be seen by a veterinarian and he would be advised as to the outcome or the greyhounds. It is a matter of contention, and certainly a matter that has irritated Mr O’Donnell, that he was not kept in the loop about what happened, particularly in relation to the greyhound, Pie, to whom he had a strong emotional attachment. The Tribunal does not see why it was that it was not communicated to him sooner. There are protocols GRV must observe, but even so, it would have been clear that Mr O’Donnell’s greyhound was 11.5 years old and one could understand his frustration about that.

Nevertheless, a veterinary examination of Pie was conducted the same day that it was taken to the Port Phillip Animal Hospital. It was found that the greyhound was suffering from:

* Loss of musculature from the left hind hip all the way down to the foot;
* Large swelling just above the tarsus;
* Complete destruction of the left hind tibia and fibula, including multiple pathological fractures;
* Osteosarcoma (a form of cancer) in the left hind leg; and
* At least two metastases in the lungs.

It is a matter of speculation whether the fractures happened on the way down to Melbourne. The evidence given by Dr Gavin Gobel, the GRV General Manager – Greyhound Welfare and Rehoming, was that this was possible, but unlikely.

GRV submitted that their veterinary advice was that Pie would have suffered gravely and been in extreme pain for some time. Again, Dr Gobel clarified that today. He did not see or examine the greyhound, but said that it would have been in significant pain, certainly from the time it was examined by veterinarian, Dr Michael Bell, on 29 July 2019 until 12 September 2019.

Further to that, on 4 October 2019, Mr O’Donnell created a Facebook post using his account, which stated: “So the liars @ GRV, Who I called out, to remove 3 dogs put my dog down. [Mr O’Donnell knew at this stage that they greyhound had been euthanised]. They r now investigating me, wat a bunch of Crooks”. GRV has taken exception to that and this forms part of the basis of charge 4.

Subsequently, a Stewards inquiry was held on 25 October 2019. Today, Mr O’Donnell indicated that he was not quite ready for that and indicated during the Tribunal hearing that, in terms of preparation, he was perhaps not ready for that inquiry. During that inquiry, Mr O’Donnell:

1. Confirmed his email address and ‘Facebook’ account name;
2. Was shown the email sent to GRV on Monday 9 September 2019 and admitted that he had sent it;
3. Admitted that he signed and surrendered four greyhounds to the GAP on 12 September 2019;
4. Stated that he had no kennels for the greyhounds on his property;
5. Admitted that he was unable to afford to construct kennels, continue to pay for food for his greyhounds and struggled to look after the greyhounds;
6. Stated that he is in serious financial difficulties and suffering with mental health conditions, which at the time he did not realise, as per his evidence today;
7. Admitted to sourcing online and administering non-prescribed ‘CBD’ oil (sic Cannabinol) to Pie when it whimpered at night, as he believed it to have a sedative effect; and
8. Stated that he was waiting for anti-inflammatory medication to treat Pie which was to arrive from a veterinary clinic but it had not arrived.

Lead Investigator and Investigative Steward, Mr Kirk Branton, and Dr Gavin Gobel both gave evidence to this Tribunal. They confirmed, amongst other matters, previous statements, attendances at the subject property, medical reports, videos, transcripts, emails and all the exhibits relied upon by GRV.

Dr Gobel did not examine Pie, but reviewed the medical report from Dr Matthew Blakely and spoke to Dr Rebecca Goode about the condition and prognosis for Pie. Dr Gobel is a veterinarian with over 30 years experience. In his opinion, Pie, a greyhound of 11.5 years, was in significant pain when it was taken and euthanised on 12 September 2019.

Mr O’Donnell had a significant emotional attachment to this dog, as he had it since it was a pup. He knew Pie was dying. He took the dog to Dr Michael Bell on 29 July 2019, when penicillin and antibiotics were prescribed. The tablets prescribed did not arrive before 12 September 2019. Mr O’Donnell followed up with a phone call, whereupon he discovered the tablets had been sent to an old address. Due to his lack of money, Mr O’Donnell did not seek further direct consultation with Dr Bell or any other veterinarian. He did, however, give Pie cannabis oil to make it more comfortable. More was needed than that.

Charges 2 and 3 are proven to the comfortable satisfaction of the Tribunal. In the period between 29 July to 12 September 2019, there should have been a direct consultation with Dr Bell or another veterinarian regarding Pie.

Charge 1 relates to a failure to provide kennels. The greyhounds had open space, fenced gates and neighbours on one side of Mr O’Donnell’s property. The dogs lived on matting at the rear of the house and it seems Mr O’Donnell was content with this arrangement. On his evidence, the greyhounds never got loose. However, as registered greyhounds, their kennelling was subject to the Rules of greyhound racing and as such, charge 1 is proven because there were no kennels, per se, provided to house the greyhounds.

In relation to charge 4, it is also proven. In context and by way of explanation only, we are of the view that it serves more as a distress signal by Mr O’Donnell at the time when, by his own admission, he was clearly not well. He was caring for his elderly mother, had very little money, there were interfamily relationship difficulties and he could not afford to keep the greyhounds.

These are the findings of the Tribunal.

**PENALTY**

Mr O’Donnell is aged 59 years. He has been involved in greyhound racing since April 1982. He and friends have enjoyed the industry and the circumstances which lead him to the Tribunal represent a low ebb in his time in greyhound racing.

He does not have any greyhounds at this time. The circumstances and explanation for his offending are well covered in the reasons for the decision of the Tribunal. Lack of money, mental health issues and family pressures were key indicators about how Mr O’Donnell found himself in the care and management of the greyhounds. Certainly, mental health considerations are also relevant in assessing penalty, as well as general deterrence. Also of relevance are the testimonials supplied by Mr O’Donnell. They are from Mr Scott James, Mr Michael Bouchaud and Mr Peter M White. The Tribunal has had the benefit of considering.

Mr Hannan, on behalf of the Stewards, has advised that there is no relevant history of breaches, but referred to cases decided by other Tribunals and the penalties given.

Of course, each case will depend on its own set of facts and circumstances. Certainly, here, charges 2 and 3 are the most serious.

In the event, the Tribunal will impose the following penalties:

Charge 1: a disqualification of any licence held by Mr O’Donnell for 4 months.

Charge 2: a disqualification of any licence held by Mr O’Donnell for 2 years.

Charge 3: a disqualification of any licence held by Mr O’Donnell for 3 years.

Charge 4: a fine of $200.

The penalties in charges 1-3 inclusive are concurrent with each other, rendering an effective term of 3 years disqualification, to commence immediately.

Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal