21 November 2019

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**MR DANNY MULLAN**

**Date of hearing:** 14 November 2019

**Panel:** Judge John Bowman (Chairperson), Ms Judy Bourke and Mr Robert Abrahams.

**Appearances:** Mr Russell Anderson appeared on behalf of the Stewards.

 Mr Danny Mullan represented himself.

**Charge:** Australian Harness Racing Rule 190(1) states a horse shall be presented for a race free of prohibited substances.

**Particulars of charge:** 1. On 13 June, the horse ‘Hes Themightyspin’ was presented to race at Maryborough harness racing meeting in Race 1, the ‘DNR Logistics Trot’;

2. At the relevant time you were the trainer of ‘Hes Themightyspin’;

3. Following Race 1, the ‘DNR Logistics Trot’, a urine sample was collected from ‘Hes Themightyspin’ with subsequent analysis of that sample revealing an arsenic concentration in excess of the allowable threshold;

4. As the trainer of ‘Hes Themightyspin’ on 13 June 2019, you have presented that horse to race in the ‘DNR Logistics Trot’ at Maryborough whilst not free of arsenic, a prohibited substance when present at a concentration in excess of 0.30 micrograms per millilitre in urine.

**Plea:** Guilty

**DECISION**

Mr Danny Mullan, you have pleaded Guilty to a breach of Rule 190(1). The charge involves the running of Race 1, the DNB Logistics Trot, at Maryborough on 13 June 2019. At the time, you were the trainer of ‘Hes Themightyspin’, which won the race. A post-race urine sample revealed arsenic concentration of 0.43, this exceeding the allowed threshold of 0.30 micrograms.

There is no suggestion by Mr Anderson on behalf of the Stewards that the arsenic concentration came from any source other than a fence post on which the horse had been chewing. He also made it clear to us that you are a person held in high esteem in harness racing circles and that it was something of an uncomfortable embarrassment for him to have to inform you of the excessive reading. Indeed, he visited you and undertook the embarrassing task of informing you personally.

We accept that you have an extremely high and enviable reputation in the industry. Apart from training and driving many very good horses, you have made various other contributions to harness racing. We accept that being charged with this offence is very distressing for you, and that is quite apparent in the manner of your presentation before us.

You have been in harness racing for in excess of 45 years and, apart from a few minor offences, the bulk of which could be described as traffic offences from your driving days, your record is outstanding. You have committed no offence, however small, since 1984.

We accept that you and your family are dedicated to horses and to harness racing. You and your family have made a very large contribution to both.

You are now effectively retired, training only 2 horses, and you are retired from work generally. We accept that this charge has come as a distressing shock to you.

There have been some 5 media releases from the Stewards about arsenic being a prohibited substances since February 2016. You frankly admit that you had at least some awareness concerning arsenic and fence posts. You replaced many of your posts, but unfortunately not the one that this horse was chewing.

Prohibited substances are just that. There are no exemptions for elevated arsenic readings. Average penalties have increased quite substantially over the last 4 years. A conservative attempt has been made to inform trainers with, as stated, 5 media releases.

We appreciate your excellent record and the efforts that you have made in the interests of harness racing over the years. However, a penalty must be imposed. General deterrence must be taken into account. We also appreciate that the inevitable disqualification of ‘Hes Themightyspin’ will result in the refund of in excess of $2,000, a significant amount for a retired man.

However, as stated, in our view a penalty must be imposed. In the circumstances of this quite individual case, we fix that at $2,000, with $1,750 of this suspended for 12 months. As stated, ‘Hes Themightyspin’ will be disqualified from the race and the finishing order amended accordingly. We repeat that this was somewhat of an extraordinary case.

Mark Howard
Registrar, Victorian Racing Tribunal