4 June 2020

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**MR DAVID AIKEN**

**Date of hearing:** 28 May 2020

**Panel:** Judge John Bowman (Chairperson) and Mr Robert Abrahams.

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

Mr David Aiken represented himself.

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

**Particulars of charge:** 1. On 1 November 2019, the horse ‘Divine Diva’ was presented to race at the Shepparton harness racing meeting in Race 8, the ‘Alabar Pace’;

2. At the relevant time you were the trainer of ‘Divine Diva’;

3. Following Race 8, the ‘Alabar Pace’, a urine sample was collected from ‘Divine Diva’ with subsequent analysis of that sample revealing an arsenic concentration in excess of the allowable threshold;

4. As the trainer of ‘Divine Diva’ on 1 November 2019, you have presented that horse to race in the ‘Alabar Pace’ at Shepparton 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 David Aiken, you have been charged with a breach of Rule 190(1) – a horse shall be presented for a race free of prohibited substances. You have pleaded guilty to the charge.

It involves Divine Diva, trained by you, which ran in and won Race 8 at Shepparton on 1 November 2019. A post-race swab returned a presence of arsenic at a concentration in excess of 0.3 micrograms per millilitre, the reading being 0.51.

There is no dispute but that this arsenic level almost certainly resulted from Divine Diva chewing a fence on your Avenel property, the fence posts having been treated with arsenic. As stated, you have since taken steps to prevent this from happening again.

You have been in the industry for 40 years as a trainer and driver. You are now 61 years of age and you are essentially a full-time trainer. You have a 40 acre property which, at the moment, has some 28 horses on it.

You have a long and very successful record in the industry. We accept without reservation that you are very highly regarded. Mr Anderson, on behalf of the Stewards, very fairly referred to you as being a very well-known and respected trainer.

You have two prior convictions for prohibited substance offences, one is very old, the other being in 2017. In each instance you could be considered to have been very unlucky and with little direct blame being attributable to you. That is perhaps reflected in the ultimate fine of $400 imposed in 2017.

We do not consider specific deterrence to be a big factor in your case. We are confident that this mistake will not occur again. You have already taken steps to rectify the situation.

General deterrence is important. Trainers must be aware of the risks associated with arsenic and fence posts. The industry has been put on alert and the propensity of some horses to chew fence posts should be well known. Trainers should be on alert.

We also keep in mind the tough financial times which trainers are suffering at the moment.

Our decision is that a fine should be imposed. That fine is $2,000, but with $1,500 suspended for a period of 12 months. It will be payable if there is a breach of the rule during that time. We are confident that shall not occur. We repeat that the bottom line is that $500 is payable immediately and $1,500 will be hanging over your head for 12 months, payable if you breach the rule again.

Divine Diva is disqualified from Race 8 at Shepparton on 1 November 2019 and the finishing order amended accordingly and prize money refunded.

Mark Howard
Registrar, Victorian Racing Tribunal