29 September 2021

**DECISION**

**GREYHOUND RACING VICTORIA**

**and**

**DAVID FERGUSON**

**Date of hearing:** 21 September 2021

**Panel:** Judge John Bowman (Chairperson) and Ms Heidi Keighran.

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

Mr David Ferguson represented himself.

**Charge:** Greyhounds Australasia Rule (“GAR”) 83(2) states:

(2) The owner, trainer or person in charge of a greyhound-

1. nominated to compete in an Event;
2. presented for a satisfactory, weight or whelping trial or such other trial as provided for pursuant to these Rules; or
3. presented for any test or examination for the purpose of a period of incapacitation or prohibition being varied or revoked

shall present the greyhound free of any prohibited substance.

**Particulars of charges:** **Charge 1**

1. You are and were at all relevant times a public trainer licenced by Greyhound Racing Victoria (GRV) (licence number 156267) and a person bound by the Greyhounds Australasia Rules (GAR) and Local Racing Rules (LRR);
2. You were at all relevant times, the trainer of the greyhound ‘*Cosmic Fox’;*
3. *‘Cosmic Fox’* was nominated to compete in Race 8, conducted by the ‘Warragul Greyhound Racing Club at Warragul on 23 April 2020 (**the Event**);
4. On 23 April 2020, you presented ‘*Cosmic Fox’* at the event not free of any prohibited substance, given that;

a) A post-race sample of urine was taken from ‘*Cosmic Fox’* at the event (**sample V66145**);

b) Cocaine, Benzoylecgonine and Ecgonine Methyl Ester were detected in sample V66145**.**

**Charge 2**

1. You are and were at all relevant times a public trainer licenced by Greyhound Racing Victoria (GRV) (licence number 156267) and a person bound by the Greyhounds Australasia Rules (GAR) and Local Racing Rules (LRR).
2. You were at all relevant times, the trainer of the greyhound *‘Cosmic Chieftain’;*
3. ‘*Cosmic Chieftain’* was nominated to compete in Race 8, conducted by the Warragul Greyhound Racing Club at Warragul on 8 May 2020 (**the Event**);
4. On 8 May 2020, you presented ‘*Cosmic Chieftain’* at the event not free of any prohibited substance, given that;

a) A pre-race sample of urine was taken from ‘*Cosmic Chieftain’* at the event (**sample V660256)**;

b) Diclofenac was detected in sample V660256.

**Pleas:** Guilty

**DECISION**

Mr David Ferguson, you have pleaded not guilty to two charges.

Charge 1 relates to a dog trained by you, namely Cosmic Fox, providing a positive return to a post-race swab at Warragul on 23 April 2020. Cosmic Fox was competing in Race 8. This was alleged to be a breach of GAR 83(2). The swab was positive to cocaine.

Charge 2 concerns a positive return to a pre-race swab at Warragul on 8 May 2020. On this occasion, the dog was Cosmic Chieftain in Race 8. Again, a breach of GAR 83(2) is alleged. The principal substance involved was Diclofenac.

In putting the case on behalf of the Stewards, Mr Hannan of Counsel relied upon a large number of documents, including records of interviews, chemical analysis, and the like. You did not wish to question any Stewards, scientific experts, or other witnesses.

Your argument essentially focused upon the cocaine charge and the fact that, some weeks or a month after the 23 April swab, a piece of meat containing cocaine allegedly dropped from the top of a kennel at Warragul, the kennel being one in which a dog of yours was being placed. There is no argument but that such a piece of meat was in the kennel, was given to the Stewards and did contain cocaine. How it got there is not clear. You were critical of the cleaning work undertaken at the kennels, and put questions related to this in regard to both charges.

You did not give or call any evidence, save to answer some questions when the issue of penalty was being discussed. We find the charges proven. These offences are effectively either in the nature of strict or absolute liability. We shall not enter into that debate. Suffice to say that the evidence of the piece of meat relates to something which occurred weeks after the offence of 23 April 2020 and in circumstances which are not entirely clear. We are comfortably satisfied that Charge 1 has been proven.

There is even less dispute concerning Charge 2, save for answers to questions of yours in relation to general cleaning efficiency. We find Charge 2 to be proven.

In relation to penalty, firstly we note that you have now been without a licence for approximately 15 months, you having been disqualified in relation to these charges, or at least Charge 1. You have a prior conviction for the same substance as in Charge 2. The discounts which frequently apply as a result of pleas of guilty are not available for either charge.

You are a hobby trainer aged 49 years. You are otherwise in full time employment and have a variety of skills. We accept that you have done volunteer work at the Lang Lang facility and that your employment skills are useful in that regard.

Proven Charges involving prohibited substances bring disrepute to the industry. The concept of a level playing field is frequently and appropriately mentioned in these cases. The image of greyhound racing as a fair and honest sport is damaged.

Bearing in mind all of the above, including the fact that you have already been out of the industry for some 15 months, we have arrived at the following penalties:

On Charge 1, the cocaine charge you are disqualified for a period of 18 months, which includes the 15 months which you have already served.

On Charge 2, and bearing in mind that this is your second breach of the Rule, you are disqualified for 9 months cumulatively, 6 months of which is in turn suspended for 24 months.

The bottom line is that you are disqualified for a total of another 6 months, and there is a suspended disqualification of a further 6 months hanging over you for 24 months.

In addition, Cosmic Fox is disqualified from Race 8 at Warragul on 23 April 2020 and Cosmic Chieftain is disqualified from Race 8 at Warragul on 8 May 2020 and the finishing orders are amended accordingly.

Mark Howard
Registrar, Victorian Racing Tribunal