7 October 2021

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**JOHN SCOTT**

**and**

**HELLEN SCOTT**

**Date of hearing:** 16 September 2021

**Panel:** Judge John Bowman (Chairperson) and Mr Des Gleeson.

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

Mr Mark Caldwell represented Mr and Mrs Scott.

**Charge:** 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 – Mr John Scott**

1. On 10 September 2019, the horse ‘De Lancome NZ’ was presented to race at the Shepparton harness racing meeting in Race 7, the ‘Hunter Rural Pace (1st Heat)’;
2. At the relevant time you were a licensed driver and authorised representative of Hellen Scott, the trainer of ‘De Lancome NZ’;
3. Prior to Race 7, the ‘Hunter Rural Pace (1st Heat), a urine sample was collected from ‘De Lancome NZ’ with subsequent analysis of that sample revealing a cobalt concentration in excess of the allowable threshold;
4. As the person left in charge of ‘De Lancome NZ’ on 10 September 2019, you presented that horse to race in the ‘Hunter Rural Pace (1st Heat)’ at Shepparton not free of cobalt, a prohibited substance when present at a concentration in excess of 100 micrograms per litre in urine.

**Charge 1 – Ms Hellen Scott**

1. On 10 September 2019, the horse ‘De Lancome NZ’ was presented to race at the Shepparton harness racing meeting in Race 7, the ‘Hunter Rural Pace (1st Heat)’;
2. At the relevant time you were the trainer of ‘De Lancome NZ’;
3. Prior to Race 7, the ‘Hunter Rural Pace (1st Heat)’, a urine sample was collected from ‘De Lancome NZ’ with subsequent analysis of that sample revealing a cobalt concentration in excess of the allowable threshold;
4. As the trainer of ‘De Lancome NZ’ on 10 September 2019, you presented that horse to race in the ‘Hunter Rural Pace (1st Heat)’ at Shepparton not free of cobalt, a prohibited substance when present at a concentration in excess of 100 micrograms per litre in urine.

**Plea:** Guilty

**DECISION**

**1. General Background**

Mrs Hellen Scott and Mr John Scott have each pleaded guilty to a breach of AHRR 190(1). This also involves the operation of AHRR 190(3).

The charges arise out of Race 7 at Shepparton on 10 September 2019. The horse involved was *De Lancombe*, which was unplaced. The horse was trained by Hellen Scott, a licensed trainer. It was taken to the Shepparton track by her husband, John Scott, in circumstances which shall be discussed. John Scott is a licensed driver and was the authorised representative of Hellen Scott at Shepparton on 10 September 2019. Hellen Scott was not present due to a personal injury which she had suffered. Thus, John Scott was the authorised representative and was to drive the horse.

A pre-race urine sample taken from *De Lancombe* was positive to cobalt in excess of the allowable threshold.

At the hearing before us, Mr. Andrew Cusumano represented the Stewards. Mr Mark Caldwell appeared as solicitor on behalf of Hellen and John Scott. Helpful submissions were made on behalf of the parties. We might add that the hearing of this case was delayed very considerably for a number of reasons, the COVID-19 virus being prominent amongst them. The Scotts live in Lavington, just north of the Murray River, and this did not help the disposition of the matters. Ultimately a telephone hearing was conducted by agreement.

**2. Factual Background**

We make the following findings of fact.

As stated, as at 10 September 2019, Hellen Scott was the trainer of *De Lancombe.* The horse was entered at Shepparton. John Scott had been a registered trainer, but, following a lengthy period of disqualification, as at the above date he was a licensed driver, but not a licensed trainer. He was also in full time employment, effectively in the landscape gardening industry. We accept that on 10 September 2019, during the day he was engaged in his usual occupation. He was to drive *De Lancombe* at Shepparton that night, but had no intention of travelling there earlier than necessary as the authorised representative of his wife. We would add that he did have such authority were it necessary, but it would appear that he was of the belief that the exercise of it would not be required.

Whilst John Scott was going about his normal occupational duties, he received a phone call from his wife. She was suffering from an injury. She would not be able to take *De Lancombe* to Shepparton. Could he leave work and (as her authorised representative) take the horse. He agreed to cease work, collect the horse, take it to the meeting at Shepparton, and then drive it as required. All of this he did. He was the authorised stable representative at that meeting and the person in charge of *De Lancombe,* including when it underwent the pre-race swab that proved positive to cobalt. He also drove it.

We also accept that the horse was found at a subsequent date to be suffering from cancer. However, we say now that we are not persuaded that this played any role in the cobalt reading. Certainly, this avenue was conscientiously explored, but the end result is that we are not satisfied that it is of any great relevance.

How the horse came to have the reading revealed in the swab is unclear.

Against that factual background, we turn to the individual cases and the question of penalties.

**3. Hellen Scott**

Hellen Scott is a Grade A trainer. She has been a trainer since 2015, having been a stable hand for two years previously. She has no relevant prior convictions and a good record. She entered a guilty plea some time ago and has had this charge hanging over her head for in excess of two years. She has co-operated fully with the Stewards. We take into account her guilty plea and her co-operation.

As a trainer she has been very successful. As we understand it, over the last four seasons horses trained by her have won close to half a million dollars in prize money. The owners for whom she trains are very supportive.

Hellen Scott cannot identify the cause of the high cobalt reading. *De Lancombe* was euthanised with a large thoracic tumour in June 2020. It had probably been present for quite some time. However, as stated, we are not persuaded that this played any significant role in the sudden increase in the cobalt reading on 10 September 2019.

There is no evidence of “nobbling” or third party interference, either deliberate or accidental. The treatment regime or a mistake in relation to it seems to be the most likely cause of the elevated reading. Trainers must be vigilant as to the substances fed to their horses and the feeding regime employed. General deterrence is an important consideration. Great care must be exercised by trainers, no matter how successful they are or how good their record. The image of a level playing field is particularly important.

When we weigh up all these factors and the penalties imposed in like cases, a period of suspension seems to us to be warranted. The Stewards have sought a period of suspension of 12 months. Essentially we agree, but in our opinion the circumstances, including those matters set out earlier as to the good record, the guilty plea and the like, warrant the suspending of six months of that penalty for a period of 24 months. Should Hellen Scott breach the Rule again during that period, the full suspension period of 12 months will be activated. If she does not, the penalty served will be suspension for six months.

**4. John Scott**

John Scott is a licensed driver. His record is far from impressive, with numerous prior offences. These include offences involving prohibited substances and the like. The most recent offence of that nature ultimately attracted a penalty of disqualification for two years, this being in 2012. John Scott was a licensed trainer at that time. As we understand it, when he returned to the industry it was as a driver.

Mr Cusumano, on behalf of the Stewards, has sought a penalty of a period of disqualification of three to four years. We say now that we are of the opinion that, in the circumstances of this case, such a penalty would be manifestly excessive, even bearing in mind John Scott’s record.

The circumstances of his involvement point to a much lesser penalty. Essentially there is no challenge to the following propositions, which represent our findings.

On 10 September 2019 John Scott had no intention of being the authorised representative of his wife in relation to *De Lancome* at the Shepparton meeting. He went at short notice at his wife’s request. He had to leave work in order to do so. She was suffering from a problem involving a personal injury. There is no evidence that John Scott participated in or knew of any administration of a prohibited substance. As the result of an unanticipated request, he simply left work and, as his wife’s representative, took the horse to Shepparton, where he was to drive it. That seems to us to be a low level of culpability.

Further, there is no suggestion that he played any role of significance in drawing up or administering the horse’s treatment regime. He was a full-time worker elsewhere and a licensed driver. The level of his culpability would seem to be that of someone who should have been more vigilant as to what was happening with horses which may come under his supervision.

One aspect of the circumstances surrounding John Scott’s disqualification for two years in 2012 (in relation to TCO2) is worth mentioning. Interestingly, it would appear that roles were somewhat reversed on that occasion. John Scott was the guilty trainer/administrator, who had sent the horse to the track in the charge of another, a Mr Charlie Martin. The ultimate penalty imposed (on appeal) on Mr Charlie Martin was disqualification for 32 days (which he had already served) and a fine of $3,000. If anything, his role seems to have been greater than that of John Scott in this case.

We take into account John Scott’s minor role and the circumstances which we have described. We take into account his plea of guilty and the assistance which he now gives to the local harness racing industry. We cannot ignore his very poor record.

Bearing all of this in mind, the penalty which we impose is suspension for six months, three months of which is in turn suspended for a period of 24 months. If he should breach the relevant Rules again during that 24 month period, the full penalty of six months suspension shall be activated. If he does not, the penalty served will be suspension for three months.

Unless there is some other arrangement with the Stewards, the suspension shall commence immediately. In addition, *De Lancombe* is disqualified from Race 7 at Shepparton on 10 September 2019 and the finishing order is adjusted accordingly.

Mark Howard
Registrar, Victorian Racing Tribunal