20 May 2022

**DECISION**

**GREYHOUND RACING VICTORIA**

**and**

**JOSEPH SULTANA**

**Date of hearing:** 10 May 2022

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

**Appearances:** Mr Liam Bourke, instructed by Mr Anthony Pearce appeared on behalf of the Stewards.

Mr Joseph Sultana represented himself.

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

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

1. Nominated to compete in an Event;

 shall present the greyhound free of any prohibited substance.

 GAR 84A(1) states:

1. The person in charge of a greyhound must keep and retain records detailing all vaccinations, antiparasitics and medical treatments administered to a greyhound from the time the greyhound enters their care until the greyhound leaves their care and for a minimum of two (2) years. Such record of treatment must be produced for inspection when requested by a Steward or a person authorised by the Controlling Body. Any person responsible for a greyhound at the relevant time who fails to comply with any provision of this rule shall be guilty of an offence.

**Particulars of charges: Charge 1**

1.You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (**GRV**) (Member No. 152935) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.

 2. You were, at all relevant times, the trainer of greyhound “Panadero Grace” (VIOXY)

 3. “Panadero Grace” (VIOXY) was nominated to compete in Race 5 conducted by the Cranbourne Greyhound Racing Association on the 2nd of August 2021 **(the Event).**

4. On 2nd of August 2021, you presented “Panadero Grace” (VIOXY) at the Event not free of any prohibited substance given that:

 (a) A pre-race sample of urine was taken from “Panadero Grace: (VIOXY) at the Event **(the sample);** and

 (b) Morphine, Codeine, Oripavine and Thebaine were detected in the sample.

 Charge 2

1. You were, at all relevant times, a trainer registered with Greyhound Racing Victoria (**GRV**) (Member No. 152935) and a person bound by the Greyhounds Australasia Rules and Local Racing Rules.
2. You have been the registered trainer of greyhound “Panadero Grace” (VIOXY) Since 4th February 2021.
3. You failed to keep and/or maintain Treatment Records for “Panadero Grace” (VIOXY).

**Plea:** Not Guilty

**DECISION**

Mr Joseph Sultana, you have pleaded not guilty to a breach of GAR 83(2)(a) and to a breach of GAR 84A(1). We shall deal with the charges in turn.

The charge pursuant to GAR 83(2)(a) arises out of the run of the dog Panadero Grace, trained by you, a licensed trainer, in Race 5 at Cranbourne on 2 August 2021. A pre-race urine sample tested positive to four prohibited substances, namely Morphine, Codeine, Thebaine and Oripavine. You have been charged with presenting Panadero Grace when the dog was not free of those prohibited substances.

There was no challenge by you to what could be described as the science associated with the positive samples, nor to the collection, packaging and the like of the sample. Your basic position is that you are not certain how the prohibited substances got into your dog’s system so as to show up in a swab. The dog had been treated by Mr Ray Gilmore, a masseur and “muscleman”. Mr Gilmore takes a range of medications. It had also been in close proximity to Mr Charlie Meo, an elderly friend of yours, who is also on a range of medications. The expert evidence of the Stewards is that the presence of the prohibited substances probably arose from the feeding to Paradero Grace of supermarket bread. This was something that you did regularly.

We are of the view that the expert evidence on behalf of the Stewards provides the most likely explanation. In presentation cases, as opposed to administration cases, the source of the prohibited substance is only potentially of limited assistance, and then more on the question of penalty. In this case, the dog was presented and provided a urine sample which proved positive to prohibited substances. In such circumstances, and without there being some fairly unusual external intervention or testing error, a presentation case is made out. We find it proven.

In relation to the charge pursuant to GAR 84A(1) – what could be described as the failure to keep proper records – we again find the charge proven. Your wife does the bookwork. Again, it is a fairly simple charge in relation to liability. There has either been the proper recording of substances administered or there has not. Unfortunately, here the records were not as they should have been, and we find that the charge has been mark out.

In summary, we are comfortably satisfied that both charges are proven. We will now turn to the question of penalty.

**PENALTY**

Mr Joseph Sultana, we have found you guilty of a breach of GAR 83(2)(a) and a breach of GAR 84A(1).

We turn now to the question of penalty. We shall deal firstly with the breach of GAR 83(2)(a).

As stated in our decision on liability, we agree with the Stewards’ expert evidence that the most likely source of the four prohibited substances was the feeding of Panadero Grace with poppy seed bread.

That it was poppy seed bread that most probably caused the positive return is most unfortunate for you, because you should have been well and truly aware of the risks associated with feeding bread to greyhounds. Apart from the fact that you have been a licensed trainer since 2005, warnings have been sent out repeatedly to those in the industry concerning the risks associated with the use of poppy seed bread. Further, we refer to the decision of Justice Shane Marshall and the Racing Appeals and Disciplinary Board on 8 February 2017, in a case brought against you. This case involved two charges of presentation involving positive returns to codeine and morphine. In their decision of 8 February 2017, the RAD Board specifically alerted you to the risks associated with feeding dogs bread. It is evident in the Board’s decision that you were then informed and made aware of the dangers of feeding bread to greyhounds.

Further, on 23 August 2017 the RAD Board again dealt with you for a breach of the same Rule in relation to an offence on 1 May 2017. This again concerned codeine and morphine.

In any event, the industry was well and truly warned of the risks associated with feeding bread to dogs. We appreciate that you are illiterate. However, on 8 February 2017, you personally were well aware of those risks. We would refer to paragraph 4 of the RAD Board decision of 8 February 2017.

The penalty imposed on you on 8 February 2017 was 2 years disqualification on each charge, concurrent, and with 12 months suspended for 12 months. On 17 May 2017 at VCAT, this penalty was reduced to 6 months disqualification, wholly suspended for 2 years. However, the warnings given to you at the RAD Board and your acknowledgment of then becoming aware of the risks of bread still retain relevance.

Further, it would seem that on 23 August 2017 you were again before the RAD Board for a breach of what is now GAR 83(2)(a). This time the substances involved were Codeine and Morphine. You were suspended for a period of one month pending the hearing, and, at the hearing, disqualified for a period of a further five months.

Thus, your record in relation to this Rule and to at least two of these substances is not a good one.

Your personal circumstances are that you are 72 years of age and in receipt of the aged pension. Until recently, you were in receipt of the invalid pension and had so been since the age of 33. We accept that you have had significant health problems. You have recently moved premises, having bought a property in which you have built kennels and done other works. You have approximately 21 dogs on the premises, eight of which are racing. All dogs belong to you and your wife. As stated, we also accept that you are not in good health.

Having weighed up all the circumstances, we are of the view that the appropriate penalty for the breach of GAR 83(2)(a) is one of 12 months disqualification. The plea was ‘not guilty’, so that there is no appropriate discount on the basis of the plea.

In relation to the breach of GAR 84A(1), – the record keeping offence – your wife effectively accepted responsibility. Whilst there was a nominal plea of ‘not guilty’, as stated she in fact accepted responsibility. There will be a fine of $300.

The end result is that you are disqualified for 12 months and fined $300. Panadero Grace is disqualified from Race 5 at Cranbourne on 2 August 2021 and the finishing order amended accordingly.

Mark Howard
Registrar, Victorian Racing Tribunal