11 December 2020

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**KELVIN BARKER**

**Date of hearing:** 8 December 2020

**Panel:** Justice Shane Marshall (Deputy Chairperson) and Mr Robert Abrahams.

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

Mr Lance Justice appeared on behalf of Mr Kelvin Barker.

Mr Kelvin Barker appeared.

**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 5 February 2020, the horse “Ruby Delight” was presented to race at the Geelong harness racing meeting in Race 1, the ‘Devcon Properties Pace’;

2. At the relevant time you were the trainer of “Ruby Delight”;

3. Following Race 1, the ‘Devcon Properties Pace’, a urine sample was collected from “Ruby Delight” with subsequent analysis of that sample revealing the presence of testosterone at a concentration in excess of the allowable threshold;

4. As the trainer of “Ruby Delight” on 5 February 2020, you presented that horse to race in the ‘Devcon Properties Pace’ whilst not free of testosterone, a prohibited substance when present at a concentration in excess of 55 micrograms per litre in urine in fillies and mares.

**Plea:** Guilty

**DECISION**

1. Mr Kelvin Barker is a registered harness racing trainer and the trainer, at all relevant times, of the horse “Ruby Delight”. Ruby Delight raced at Geelong on 5 February 2020. A post-race urine sample showed the presence of testosterone at a concentration in excess of the allowable threshold of 55 micrograms per litre in urine. The reading was 67 micrograms per litre in urine according to Racing Analytical Services Ltd (“RASL”) and 73 according to the Australian Racing Forensic Laboratory (“ARFL”).
2. Stewards of Harness Racing Victoria (“HRV”) have charged Mr Barker under Australian Harness Racing Rule (“AHRR”) 190(1) with presenting a horse while not free of a prohibited substance. Mr Barker has pleaded guilty.
3. The cause of the high reading seems most likely to be as a result of the mare having a tumour in her ovary. Expert medical advice is that elevated testosterone levels are reported in 40% - 50% of mares with granulosa cell tumours in their ovaries. However, it is odd that in a test on 1 June 2020, no prohibited substance was detected.
4. Mr Barker only had the horse in his stable since 15 December 2019 and was not aware of her medical condition until 1 June 2020.
5. In setting a penalty, we take into account the guilty plea, Mr Barker’s excellent record and a recent penalty in a like matter. We also take into account the fact that Mr Barker was not aware of the mare’s condition before the race or the likelihood of that condition increasing her testosterone levels.
6. In all the very unusual circumstances of this case, we record a finding of guilty to the charge, but impose no penalty. The exceptional circumstances of this case dictate that result.
7. In addition, Ruby Delight is disqualified from Race 1 at Geelong on 5 February 2020.

Kathleen Scully  
Assistant Registrar, Victorian Racing Tribunal