14 February 2022

**DECISION**

**GREYHOUND RACING VICTORIA**

**and**

**KENNETH KUBIK**

**Date of hearing:** 10 February 2022

**Panel:** Magistrate John Doherty (Deputy Chairperson) and Mr Des Gleeson.

**Appearances:** Mr Marwan El-Asmar appeared on behalf of the Stewards.

Mr Kenneth Kubik represented himself.

**Charges:** Local Racing Rule (“LR”) 42.6(a) states:

(a) An Owner must make all reasonable efforts to avoid euthanasia of their greyhound by finding it a suitable long term home.

 LR 42.6(i)(i) states:

 (i) An Owner must:

 (i) keep detailed records of their compliance with LR42.6.

 Greyhounds Australasia Rule (“GAR”) 105(4)(i) states:

 (4)(i) A registered person shall within 3 working days of a greyhound coming pursuant to or leaving the person’s care or custody, give notice to the Controlling Body of that occurrence.

 GAR 86(o) states:

 A person (including an official) shall be guilty of an offence if the person-:

(o) has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which in the opinion of the Stewards or Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct.

**Particulars of charges: Charge 1: LR 42.6(a)**

1. You were, at all relevant times, a owner and trainer registered with Greyhound Racing Victoria (“GRV”) (Member No. 3934), and a person bound by the Greyhound Australasia Rules (“GAR”) and Local Racing Rules (“LR”).
2. You were, at all relevant times, the registered owner of the greyhound “Polar Ace” (VHCRB).
3. On 5 January 2021, you surrendered the greyhound Polar Ace (VHCRB) to the Nillumbik Shire Council Pound.
4. You failed to make any reasonable effort to avoid the euthanasia of the greyhound Polar Ace (VHCRB) by finding the greyhound a suitable long term home.
5. If not for the intervention of Greyhound Adoption Program (“GAP”) Polar Ace was scheduled to be euthanised on 8 January 2021.

**Charge 2: LR 42.6(i)(i)**

1. You were, at all relevant times, a owner and trainer registered with Greyhound Racing Victoria (“GRV”) (Member No. 3934), and a person bound by the Greyhound Australasia Rules (“GAR”) and Local Racing Rules (“LR”).
2. You were, at all relevant times, the registered owner of the greyhound “Janray Sensation” (VFYMJ) and “Janray Blaze” (VFYMK).
3. During 2019 the greyhounds Janray Sensation (VFYMJ) and Janray Blaze (VFYMK) were rehomed to third parties.
4. You failed to keep detailed records of this rehoming including to whom and the location of where the greyhounds Janray Sensation (VFYMJ) and Janray Blaze (VFYMK) were rehomed.

**Charge 3: GAR 105(4)(i)**

1. You were, at all relevant times, a owner and trainer registered with Greyhound Racing Victoria (“GRV”) (Member No. 3934) and a person bound by the Greyhounds Australasia Rules (“GAR”) and Local Racing Rules (“LR”).
2. On 8 January 2021, an audit was conducted of greyhounds that were under your care or custody at your registered kennel address in Seymour, Victoria.
3. Registered greyhounds “Janray Sensation” (VFYMJ) and “Janray Blaze” (VFYMK) were listed on your FastTrack Account but were not located at your registered kennel address.
4. As the registered owner of Janray Sensation (VFYMJ) and Janray Blaze (VFYMK), you did not, within 3 working days of Janray Sensation (VFYMJ) and JANRAY BLAZE (VFYMK) leaving your care or custody give notice to the Controlling Body (GRV) of this occurrence.

**Charge 4: GAR 86(o)**

1. You were, at all relevant times, a owner and trainer registered with Greyhound Racing Victoria (“GRV”) (Member No. 3934) and a person bound by the Greyhounds Australasia Rules (“GAR”) and Local Racing Rules (“LR”).
2. You have, in relation to the greyhound “Polar Ace” (VHCRB), done a thing, which in the opinion of the Stewards, is improper, in that:-

(a) On 5 January 2021, you delivered and surrendered the registered greyhound Polar Ace (VHCRB), which was in your care and custody, to the Nillumbik Shire Council Pound, knowing the greyhound would be euthanised. This was despite being told on 23 November 2020 that the surrender of greyhounds to a pound is not acceptable under the Code of Practice for the Keeping of Racing Greyhounds.

**Pleas:** Guilty to all charges

**DECISION**

Mr Kenneth Kubik has pleaded guilty to four charges brought by Greyhound Racing Victoria (“GRV”) Stewards. The summary of those charges has been previously stated above. By way of explanation, Mr Kubik has conceded that he has done the wrong thing by taking “Polar Ace” to a pound at that time, although he was aware that it was prohibited. He formed the view that the greyhound would not make the Greyhound Adoption Program (“GAP”) because of its inherent behaviour. In relation to the greyhounds “Janray Sensation” and “Janray Blaze”, Mr Kubik told Stewards that, although he did not know where they were, he believed that they had been rehomed and that they had not been taken to a pound.

Mr Kubik has been a licensed public breeder and trainer since records have been kept by GRV (1985). He is 71 years of age and presently has eight greyhounds, three of which are destined for GAP. He lives alone in Seymour and has recently undergone a marriage breakup. He is afflicted with osteoarthritis and has hip issues.

We find Mr Kubik to be genuinely remorseful about what has happened and factor in his pleas of guilty, previous good record and personal circumstances when assessing penalty. We also balance against that Mr El-Asmar’s submissions about the need for general and specific deterrence and penalties previously given in similar cases.

In the event, on Charge 1 we impose a penalty of three months suspension. Charge 4 relates to the same greyhound as Charge 1 and we impose a penalty of three months suspension, wholly suspended for a period of 12 months. A fine of $500 is imposed on both Charges 2 and 3. Thus, there is a penalty of a $1,000 fine, three months immediate suspension and the suspended suspension referred to above.

Kathleen Scully
Assistant Registrar, Victorian Racing Tribunal