8 October 2021

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**MICHAEL BARBY**

**Date of hearing:** 29 September 2021

**Panel:** JudgeJohn Bowman (Chairperson) and Judge Kathryn Kings.

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

Mr Michael Barby represented himself.

**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. At all relevant times, you were a licensed trainer and driver with HRV and a person bound by the Australian Harness Racing Rules;

2. At all relevant times, you were the registered trainer of the horse ‘Teetreetommy’;

3. On 17 April 2021, ‘Teetreetommy’ was presented to race at the Geelong harness racing meeting in Race 6, the ‘Yabby Dam Racing Trot’;

4. Following Race 6, the ‘Yabby Dam Racing Trot’, a urine sample was collected from ‘Teetreetommy’ with subsequent analysis of that sample revealing the presence of aminorex;

5. As the trainer of ‘Teetreetommy’ on 17 April 2021, you presented that horse to race in the ‘Yabby Dam Racing Trot’ at Geelong whilst not free of the prohibited substance aminorex.

**Plea:** Guilty

**DECISION**

Mr Michael Barby, you have pleaded guilty to a breach of AHRR 190(1).

The charge involves the horse Teetreetommy, trained by you, which ran in Race 6 at Geelong on 17 April 2021. The horse won that race. A post-race swab proved positive to the prohibited substance aminorex, which can have a stimulating effect on the nervous system.

When interviewed by Stewards on 3 June 2021, you had no explanation as to how the swab irregularity could have occurred. Stewards carried out an inspection of the stables and the yard that housed the horse. Samples were taken from weeds in the yard.

You also made and pursed your own enquires as to the possibility of weeds being the source of the problem. Indeed, you contacted Ms Jess Tubbs, who had been involved in a very similar case, also involving aminorex – see the decision of the Tribunal of 2 July 2020.

A particular weed was then identified by you as the probable source of the aminorex. You in fact contacted the Stewards, who paid a return visit and took samples. Upon analysis, these provided positive to aminorex. We say now that you did everything that could be expected to identify the source of the substance and to assist the Stewards.

You are aged 43 years and have been a full time trainer for approximately 15 years. You have an excellent record generally, and with no relevant prior offences or, indeed, any offences of any nature. You limit the number of horses which you train and have been very successful with such limited numbers.

The industry was warned about the risks associated with certain weeds and with this substance on 23 November 2020. Of course, there is still the problem of identifying the specific weeds, but trainers must be on their toes and vigilant in relation to risks associated with weeds. We do not consider that specific deterrence is of relevance in your case, but general deterrence is to be kept in mind.

The bottom line is that the Stewards have suggested the type of penalty that was imposed in the case of Ms Tubbs.

You have no great quarrel with this. We are of the view that an identical penalty should be imposed. You are fined the sum of $750, but that is totally suspended for a period of 12 months on the basis that no further breach of this Rule occurs during that period. We are confident that no such breach will occur. We repeat that there was no intention to affect performance or knowledge of the consumption of the substance.

Unfortunately, despite your question as to whether this could be avoided, Teetreetommy is disqualified as the winner of Race 6 at Geelong on 17 April 2021. The finishing order is amended accordingly, and the prize money is to be refunded.

Mark Howard
Registrar, Victorian Racing Tribunal