15 June 2021

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**PHILLIP WALTERS**

**Date of hearing:** 7 June 2021

**Panel:** Judge John Bowman (Chairperson).

**Appearances:** Ms Amy Wood instructed by Mr Andrew Cusumano appeared on behalf of the Stewards.

Mr Zoran Petric instructed by Mr Matthew Hammond appeared on behalf of Mr Phillip Walters.

**Charges:** Australian Harness Racing Rule 190(1) states “A horse shall be presented for a race free of prohibited substances”.

 AHRR 190B states:

(1) A trainer shall at all times keep and maintain a log book:- (a) Listing all therapeutic substances in his or her possession; (b) Recording all details of treatment administered to any horse in his or her care and including as a minimum requirement: (i) the name of the horse (ii) the date of administration of treatment (iii) the name of the treatment (brand name of active constituent) (iv) the route of administration (v) the amount given (vi) the name and signature of the person or persons administering and/or authorising the treatment

**Particulars of charges: Charge 1**

1. On 25 August 2018, the horse ‘Fan Tays Ya’ was presented to race at the Tabcorp Park Melton harness racing meeting in Race 10, the ‘Nevele R Stud Breeders Crown Championship (4YO Mares)’;
2. At the relevant time you were the trainer of ‘Fan Tays Ya’;
3. Prior to Race 10, the ‘Nevele R Stud Breeders Crown Championship (4YO Mares)’, a blood sample was collected from ‘Fan Tays Ya’ with subsequent analysis of that sample revealing the presence of acetazolamide;
4. 4. As the trainer of ‘Fan Tays Ya’ on 25 August 2018, you presented that horse to race in the ‘Nevele R Stud Breeders Crown Championship (4YO Mares)’ at Tabcorp Park Melton whilst not free of the prohibited substance acetazolamide.

**Charge 2**

1. On 26 August 2018, the horse ‘Fan Tays Ya’ was presented to race at the Warragul harness racing meeting in Race 8, the ‘Rita Burnett & Josie Wilson Pace’;
2. At the relevant time you were the trainer of ‘Fan Tays Ya’;
3. 3. Prior to Race 8, the ‘Rita Burnett & Josie Wilson Pace’, a blood sample was collected from ‘Fan Tays Ya’ with subsequent analysis of that sample revealing the presence of acetazolamide;
4. 4. As the trainer of ‘Fan Tays Ya’ on 26 August 2018, you presented that horse to race in the ‘Rita Burnett & Josie Wilson Pace’ at Warragul whilst not free of the prohibited substance acetazolamide.

**Charge 3**

1. 1. On 13 September 2018, the horse ‘Playing Arkabella’ was presented to race at the Cranbourne harness racing meeting in Race 2, the ‘Woodlands Stud Pace’;
2. 2. At the relevant time you were the trainer of ‘Playing Arkabella’;
3. 3. Following Race 2, the ‘Woodlands Stud Pace’, a blood sample was collected from ‘Playing Arkabella’ with subsequent analysis of that sample revealing the presence of Recombinant Human Erythropoietin (EPO);
4. 4. As the trainer of ‘Playing Arkabella’ on 13 September 2018, you presented that horse to race in the ‘Woodlands Stud Pace’ at Cranbourne whilst not free of the prohibited substance Recombinant Human Erythropoietin (EPO).

**Charge 4**

1. 1. On 3 October 2018, you were a licensed trainer with Harness Racing Victoria;
2. 2. On 3 October 2018, you gave evidence that you had not met your obligations to keep and maintain a log book;
3. 3. You have failed to keep and maintain a log book as required.

**Pleas:** Guilty to all charges

**DECISION**

Mr Phillip Walters, you have pleaded “guilty” to four charges. They could be summarised as follows:

1. Presentation of Fan Tays Ya in Race 10 at Melton on 25 August 2018 when it was not free of the prohibited substance, acetazolamide – a breach of Rule 190(1).
2. Presentation of the same horse in Race 8 at Warragul on the following day, 26 August 2018, when not free of the same substance – also a breach of Rule 190(1).
3. Presentation of Playing Arkabella in Race 2 at Cranbourne on 13 September 2018 when not free of the prohibited substance EPO – a further breach of Rule 190(1).
4. Failing to maintain a proper logbook – a breach of Rule 190B.

Mr Zoran Petric of Counsel appeared on your behalf. Ms Amy Wood of Counsel appeared on behalf of HRV Stewards. The parties had agreed on penalties which they considered to be appropriate. All concerned are to be commended for the very sensible approach taken in regard to this long standing and quite complicated case.

Of course, the ultimate decision in relation to penalty remains that of the Tribunal. It imposes the penalty it considers to be appropriate. However, the submissions in relation to agreed penalty will obviously be taken into account. In the present case, I consider the agreed suggested penalties to be entirely appropriate and I again congratulate the parties for having adopted the sensible approach.

Mr Walters, you are 37 years of age. You have a wife and a five year old child. You were licensed as a stablehand at the age of 15, as a driver at age 16 and as a trainer at age 18. Harness Racing has been your principal source of income, although supplemented for a period by income from a coffee van. You have trained and driven a large number of horses and with considerable success. Your wife and her family are also involved in the industry.

In relation to the present offences, you were stood down on 23 November 2018. Your wife has continued in the industry, and this has led to complicated family arrangements. You reside at Kilmore, whilst she and your son live at a training establishment at Bendigo, where you are not permitted to go.

The whole situation and these charges hanging over you have had an adverse effect upon your mental health. A report from Ms Zoe Edmonds, Mental Health Occupational Therapist, has been placed before me. She has described you as being in a state of acute anxiety and stress, and has been counselling you in this regard. She has stressed that the severity of your symptoms causes you to struggle with basic normal daily functioning. As I understand it, you are getting some income from work done in the transport industry, the coffee business having failed, and of course you have not been permitted to engage in any aspect of harness racing since 23 November 2018.

You have two relevant prior convictions, one of which is particularly significant. On 18 June 2003 a horse driven by you and trained by your brother was presented not free of a prohibited substance (strychnine and tropyl tropate). You were disqualified for six months. Of greater significance, on 31 July 2009 there was another presentation offence. This was in relation to the same prohibited substance as in Charge 3 – EPO. You were disqualified for three and a half years. This penalty was imposed by the Racing Appeals and Disciplinary Board and confirmed on appeal at VCAT.

Offences of this nature damage public confidence in Harness Racing. They undermine confidence in a level playing field. General deterrence is a major consideration. In this case, specific deterrence is also highly relevant. You have a prior conviction in respect of the same prohibited substance referred to in charge 3, and received a lengthy period of disqualification.

The penalties which the parties submit are appropriate, and with which I agree, are as follows:

Charge 1 (Acetazolamide presentation) – $3,000 fine

Charge 2 (Acetazolamide presentation) – $3,000 fine

Charge 3 (EPO presentation) – 5 years disqualification

Charge 4 (Log book breach) – $250 fine

The commencing date of the five year period of disqualification in charge 3 is 23 November 2018.

In relation to the fines on charges 1 and 2, being a total of $6,000, 50% or $3,000 is suspended pursuant to Rule 256(5)(a) for a period of two years from 7 June 2021.

Pursuant to Rule 195, the horses relevant to charges 1, 2 and 3 are disqualified from the races in which they were presented.

Mark Howard
Registrar, Victorian Racing Tribunal