13 April 2022

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**RAHARNA McDONALD**

**Date of hearing:** 5 April 2022

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

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

Mr Damian Sheales, instructed by Mr Matthew Hammond represented Ms Raharna McDonald.

Dr Nick Branson appeared as a witness.

Dr Derek Major appeared as a witness.

**Charge and particulars:**

**Charge One: AHRR 218**

Australian Harness Racing Rule (“AHRR”) 218 which reads as follows:

*A person having responsibility for the welfare of a horse shall not fail to care for it properly.*

**The particulars of the charge being:**

1. At all relevant times, you resided at 490 Cureton Avenue, Nichols Point, a property where standardbred horses were stabled and trained.

2. On or about 30 December 2020, the standardbred S2180968 (known as ‘Elderado Boy’) (the Horse) was brought to 490 Cureton Avenue, Nichols Point for the purpose of being broken-in for its owner Mr Donald Pimm.

3. On or about 30 January 2021, the Horse suffered deep lacerations to the right front leg, an injury which required immediate veterinary attention and treatment.

4. After you were made aware of the injury, you assumed a responsibility for the welfare of the Horse.

5. By failing to present the Horse to a Veterinarian for attention and treatment after you were aware of the injury, you failed to care for the Horse properly.

**Plea:** Not Guilty

**DECISION**

Ms Raharna McDonald, the Stewards have charged you with a breach of AHRR 218. There is a related charge against your partner, Mr Robert Murray, under the same Rule. Whilst we shall deal now only with the charge against you, the outcome of this case will impact significantly upon his case.

AHRR 218 reads as follows:

“A person having responsibility for the welfare of a horse shall not fail to care for it properly”.

The horse in question is *Elderado Boy*. On 30 December 2020, the horse was brought to the property at Nichols Point, near Mildura, which you share with Mr Murray. It was to be broken in for its owner, Mr Donald Pimm of Broken Hill. Mr Murray would do the breaking in. There were stables, a track, and, at the relevant time, a number of horses at the establishment. Not all of them were registered standard bred horses. Mr Murray was not a licensed person. At the relevant time, you were not a licensed person. You did have a long history of involvement with horses.

On 30 January 2021, you were contacted at work by Mr Murray. *Elderado Boy* had been involved in a nasty accident with a fence and suffered a substantial laceration of its right front leg. You attended immediately.

For the purposes of the Rule and the Charge, there is no dispute but that you assumed responsibility for the welfare of the horse, Mr Murray being nowhere near as experienced in relation to the treatment of equine injuries.

Relying on your years of experience with horses and their injuries, you did not take *Elderado Boy* to a veterinary surgeon or establishment, or seek the attendance of a vet. We accept that you treated the horse carefully and with “over the counter” medications with which you were familiar.

The end result was that, by the time of an inspection on 12 August 2021, the horse had fully recovered.

A key particular of the Charge is the following:

“5. By failing to present the horse to a Veterinarian for attention and treatment after you were aware of the injury, you failed to care for the Horse properly”.

It is the only particular that describes an alleged want of due care on your part. Accordingly, it seemed to us to be a particular that warranted specific attention. For a reason that still seems something of a mystery to us, Mr Sheales, appearing for you, opposed this type of approach, and did so with quite some force and volume. However, it still seems to us that the following important question remains: Should there have been a referral to a veterinarian so as to alleviate pain and suffering on the part of the horse and was the failure so to do a breach of the rule?

A subsidiary and related question is: Did *Eldorado Boy* go through unnecessary or avoidable pain and suffering before reaching recovery?

These seem to us to be important ingredients of the charge of failing to care for the horse properly.

Evidence was taken from two veterinarians, Dr Nick Branson on behalf of the Stewards and Dr Derek Major on your behalf. The evidence was taken by way of “hot tubbing”, which, whilst taken by video link, was both efficient and helpful. You also gave evidence, including by way of cross-examination, as to what had occurred and as to your experience.

The bottom line is this. We cannot be comfortably satisfied that the Charge has been made out. *Elderado Boy* suffered a nasty laceration and leg injury. You looked after the horse carefully. That treatment included daily, if not twice daily, administration of over-the counter products, along with other attention. Basically, the products were products with which you were very familiar. You had used them, or their type, for over twenty years. You also cared generally for the welfare of the horse.

There is no dispute concerning the following. The horse made a full recovery. There is no evidence that satisfies us that it would have recovered faster or even more satisfactorily (if there can be a more satisfactory recovery than a full recovery) had the services of a veterinarian been engaged. There is no evidence that satisfies us that a better, faster or more complete recovery would have occurred if you had followed a different course, with or without veterinary assistance. We are of the view that you cared for the horse properly.

In summary, the Charge is dismissed.

Mark Howard
Registrar, Victorian Racing Tribunal