31 May 2021

**STAY APPLICATION**

**HARNESS RACING VICTORIA**

**and**

**RHYS NICHOLSON**

**Date of hearing:** 4 March 2021

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

**Appearances:** Mr Brett Day appeared on behalf of the Stewards.

Mr Rhys Nicholson represented himself.

**Charge:** Australian Harness Racing Rule (“AHRR”) 250(1)(b) states:

 (1) A driver commits an offence if:-

(b) He refuses or fails to deliver a sample as directed by the Stewards, or tampers with, adulterates, alters, substitutes or in any way hinders the collection of such sample or attempts to do any of those things.

**Particulars of charge:** The particulars of the charge being that at the Bacchus Marsh trial meeting on 27 February 2021, where Mr Nicholson participated as a driver, he failed to deliver a urine sample as directed by the HRV Stewards.

**Plea:** Not Guilty

**STAY APPLICATION**

This is a matter that comes on with urgency. I shall not go into the factual background in detail. It concerns an alleged breach of AHRR 250 at the Bacchus Marsh trials on Saturday, 27 February 2021.

Mr Nicholson has been charged with refusing to deliver a urine sample as directed by the Stewards under Rule 250(1)(b). He is contesting the charge and denies that he so refused. He said that he was willing to provide a sample, but not in the facility that was being used at Bacchus Marsh. He suggested alternatives.

An inquiry was held on 4 March 2021. Mr Nicholson pleaded not guilty and the charge was found proven. He received a period of suspension of 5 months commencing on 27 February 2021.

Apart from appealing against the finding and the penalty of 5 months, Mr Nicholson is seeking a Stay. He is scheduled to travel to Tasmania early tomorrow morning, taking with him three horses which he will drive during the Tasmanian carnival which will be running next week. He is a full-time participant in the industry. The Stewards oppose a Stay, pointing to Rule 250(4), which reads:

“In the event of a driver incurring a penalty or being prevented from driving under this Rule he shall not resume driving until he delivers a sample, as directed by the Stewards, that is free of any substance banned under Rule 251”.

Mr Day, on the Stewards behalf, argued that the Stay cannot and should not be ordered. I might add that Mr Nicholson has provided a sample earlier this week. In any event, I disagree with Mr Day. Mr Nicholson is contesting that he breached AHRR 251. He is contesting that he refused or failed to deliver a sample as directed. Rule 250(3) does not apply, as it refers to standing down pending the determination of an inquiry. That inquiry has been held. It is over and a determination has been made. Mr Nicholson is contesting the penalty imposed as a result of it.

Thus, the central question on appeal is whether a penalty should have been imposed. That is the important question that will come before the Tribunal. The hearing will be what is referred to as a hearing de novo, that is a new fresh hearing. Whether he should be penalised will have to be determined. Whether he receives a penalty or prevented from driving under the Rule is the whole issue for determination on appeal.

In those circumstances, it seems to me that the Stay is appropriate. It will be a limited one and hopefully the appeal can be brought on rapidly. The Stay which is granted will operate until 11.59pm Saturday 13 March 2021.

Mark Howard
Registrar, Victorian Racing Tribunal