8 July 2021

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**ROBERT WALTERS**

**Date of hearing:** 25 June 2021

**Panel:** Judge John Bowman (Chairperson) and Mr Robert Abrahams.

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

Mr Damian Sheales represented Mr Robert Walters.

**Charge:** Australian Harness Racing Rule (“AHRR”) 190(1) states:

A horse shall be presented for a race free of prohibited substances.

**Particulars of charges: Charge 1**

1. On 8 July 2019, the horse ‘Paddy Mach’ was presented to race at the Maryborough harness racing meeting in Race 4, the ‘Maryborough Highland Society Pace’;
2. At the relevant time you were the trainer of ‘Paddy Mach’;
3. Following Race 4, the ‘Maryborough Highland Society Pace’, a urine sample was collected from ‘Paddy Mach’ with subsequent analysis of that sample revealing an arsenic concentration in excess of the allowable threshold;
4. As the trainer of ‘Paddy Mach’ on 8 July 2019, you have presented that horse to race in the ‘Maryborough Highland Society Pace’ at Maryborough whilst not free of arsenic, a prohibited substance when present at a concentration in excess of 0.30 micrograms per millilitre in urine.

**Charge 2**

1. On 18 July 2019, the horse ‘Lady Flora’ was presented to race at the Kilmore harness racing meeting in Race 3, the ‘Momentum Gaming Pace’;
2. At the relevant time you were the trainer of ‘Lady Flora’;
3. Following Race 3, the ‘Momentum Gaming Pace’ a urine sample was collected from ‘Lady Flora’ with subsequent analysis of that sample revealing an arsenic concentration in excess of the allowable threshold;
4. As the trainer of ‘Lady Flora’ on 18 July 2019, you have presented that horse to race in the ‘Momentum Gaming Pace’ at Kilmore whilst not free of arsenic, a prohibited substance when present at a concentration in excess of 0.30 micrograms per millilitre in urine.

**Charge 3**

1. On 17 October 2019, the horse ‘Lady Flora’ was presented to race at the Kilmore harness racing meeting in Race7, the ‘Jet Roofing Pace’;
2. At the relevant time you were the trainer of ‘Lady Flora’;
3. Prior to Race 7, the ‘Jet Roofing Pace’ a urine sample was collected from ‘Lady Flora’ with subsequent analysis of that sample revealing an arsenic concentration in excess of the allowable threshold;
4. As the trainer of ‘Lady Flora’ on 17 October 2019, you have presented that horse to race in the ‘Jet Roofing Pace’ at Kilmore whilst not free of arsenic, a prohibited substance when present at a concentration in excess of 0.30 micrograms per millilitre in urine.

**Charge 4**

1. On 14 July 2020, the horse ‘Lady Flora’ was presented to race at the Kilmore harness racing meeting in Race 1, the ‘Trackside Bistro Pace’;
2. At the relevant time you were the trainer of ‘Lady Flora’;
3. Following Race 1, the ‘Trackside Bistro Pace’ a urine sample was collected from ‘Lady Flora’ with subsequent analysis of that sample revealing an arsenic concentration in excess of the allowable threshold;
4. As the trainer of ‘Lady Flora’ on 14 July 2020, you have presented that horse to race in the ‘Trackside Bistro Pace’ at Kilmore whilst not free of arsenic, a prohibited substance when present at a concentration in excess of 0.30 micrograms per millilitre in urine.

**Plea:** Guilty

**DECISION**

Mr Robert Walters, you have pleaded guilty to four charges. Each involves a breach of AHRR 190(1). In each instance, the prohibited substance involved was arsenic.

As is evident, each charge could be described in summary form as a presentation charge. The relevant details are as follows:-

1. *Paddy Mach.* Maryborough. 8 July 2019. Race 4. First.
2. *Lady Flora.* Kilmore. 18 July 2019. Race 3. First.
3. *Lady Flora.* Kilmore. 17 October 2019. Race 7. Fifth.
4. *Lady Flora.* Kilmore. 14 July 2019. Race 1. First.

There is no challenge to the science or to the accuracy of the readings obtained.

The hearing basically concerned the prevailing circumstances, as outlined by you and by Mr Damian Sheales, who appeared on your behalf. Essentially, these were not challenged. They are as follows.

The probable source of the arsenic was not apparent to you until well after the positive returns involved in Charges 1 and 2. That the samples taken contained arsenic at a prohibited level was not known or confirmed until 6 September 2019. You had been aware of the risks of arsenic and had thought that a potential source of it could have been treated timber posts. You went to considerable trouble and some expense to replace posts and fencing. In a discussion with the Stewards on 13 August 2019, the possibility of contaminated surface water had been raised.

However, another positive return occurred after the race on 17 October 2019. It was then thought, and apparently accurately, that the arsenic originated from contamination beyond the boundaries of your property. You had cleared about three acres of land on your property and put in a new drain. As we understand it, at times during winter, water had been coming downhill on to your property from an adjacent property, where there were settling ponds. In your new drainage system, any such water would have crossed a long disused railway line on the way. In the submission of Mr Sheales, this would explain the source of the arsenic and why samples returned to normal over the drier summer months, before another positive reading on 14 July 2020.

As we have said, essentially this explanation was not challenged by the Stewards, and neither was the proposition that you have spent something in the order of $14,500 on fencing and drainage in identifying and addressing the problem.

Turning to your personal situation, you have long been involved in harness racing on a full time basis. There has been quite a sharp downturn in stake money won by your horses over the last two seasons. We understand that you are under considerable financial pressure.

You do have a relevant prior conviction in relation to arsenic. On 5 June 2019, you were fined $7,000, $3,500 of which was suspended for a period of 12 months. We bear that in mind.

We turn now to the Charges to which you are pleading guilty.

Charges 1 and 2 relate to positive returns obtained on 8 and 18 July 2018. We accept that they arose from contamination which came from another person’s property and of which you were unaware. There seem to us to be similarities to the situation in the case of *Terry French* (decided on 22 March 2021), where the arsenic exposure came from a fence post or posts not on the property of the person charged. In the present case, the arsenic effectively came from another property. That this was happening was not known to you at the time of the relevant events occurring.

In these circumstances, we find that, on each of Charges 1 and 2, you are fined $2,500, but each penalty is suspended for a period of 12 months. Should you breach this Rule again during that period the suspended penalty will be activated.

By the time of the breach constituting charge 3 (17 October 2019), you were aware of the existence of an arsenic problem. However, you had not had a great deal of time to investigate it and take remedial measures. We are of the view that the appropriate penalty is a fine of $3,000, but of that amount $2,500 is suspended for a period of 12 months. Again, this will be activated by a breach.

In relation to Charge 4, which concerned a breach on 14 July 2020, you should have been on alert and taken more investigative and remedial measures during the period since the positive result for arsenic on 6 September 2019. Some ten months had passed. We appreciate that you may have been lured into a false sense of security over the drier months, but you should have been on alert over that period after the positive finding.

You have been in the industry long enough to know the importance of the concept of a level playing field. In relation to Charge 4, both specific and general deterrence are relevant and important. On Charge 4, you are fined $4,000. We suspend $1,750 for a period of 12 months on the usual terms.

The end result is that, on the four Charges, you are fined a total amount of $12,000, with S9,250 being suspended for 12 months.

Each horse is disqualified from the relevant race in which it competed and in each instance the finishing order is amended accordingly.

For jurisdictional reasons, we make no order in relation to any suspended amount which might be repayable in respect of any breach of the Order of the HRV RAD Board of 5 June 2019.

Mark Howard
Registrar, Victorian Racing Tribunal