5 February 2020

**DECISION**

**GREYHOUND RACING VICTORIA**

**and**

**MR ROCKY CRISAFI**

**Date of hearing:** 28 January 2020

**Panel:** Judge John Bowman (Chairperson), Ms Heidi Keighran and Ms Maree Payne.

**Appearances:** Mr Marwan El-Asmar appeared on behalf of the Stewards.

Mr Lynton Hogan represented Mr Crisafi.

**Charge:** GAR 83(2) states:

The owner, trainer or person in charge of a greyhound-

1. nominated to compete in an Event;
2. presented for a satisfactory, weight or whelping trial or such other trial as provided for pursuant to these Rules; or
3. presented for any test or examination for the purpose of a period of incapacitation or prohibition being varied or revoked

shall present the greyhound free of any prohibited substance.

**Particulars of charge:**

1. You are, and were at all relevant times, a trainer licensed by Greyhound Racing Victoria and a person bound by the Greyhound Australasia Rules.
2. You were, at all relevant times, the trainer of the greyhound *“Blackjack Neo”.*
3. *“Blackjack Neo”* was nominated to compete in race 6, ROOKIE REBEL, S/E Group 1, conducted by the Meadows Greyhound Racing Club on 16 February 2019 (**the Event**).
4. On 14 February 2019, you were the licensed trainer of “Blackjack Neo” when an out of competition swab sample of urine was taken at your kennelling address leading up to the Event (the Sample).
5. The permanently banned prohibited substance Norketamine and Dehydonorketamine was detected in the Sample.

**Plea:** Guilty

**DECISION**

Mr Rocky Crisafi, you have pleaded “guilty” to a breach of Rule 79A, which deals with out of competition testing. A dog trained by you, namely “Blackjack Neo” was invited to perform in and was nominated a Group 1 Rookie Rebel at the Meadows on 16 February 2019. It was so nominated on 11 February 2019.

On 14 February 2019, the stewards collected an out of competition sample from Blackjack Neo.

On 16 February 2019, Blackjack Neo raced in an event and ran second. Second place prizemoney was $21,335. Blackjack Neo was also tested twice on the night and both samples proved to be negative.

The out of competition sample taken on 14 February 2019 proved positive to Norketamine and Dexhydroketamine – effectively a permanently banned prohibitive substance.

There are two issues in this case. One deals with the penalty to be imposed. The other is the operation of Rule 79A(4), dealing with disqualification. In relation to the latter point, it involves a question of law. Pursuant to the *Racing Act 1958* (the Act), it will be dealt with and ruled upon by me as the Chairperson, and we will come to that.

In relation to the breach of Rule 79A to which you have pleaded “guilty”, the stewards seek a penalty of four weeks suspension fully suspended for 12 months. The stewards accept that the likely cause of the positive swab was the accidental feeding to the dog of contaminated meat, certainly not a deliberate act. The penalty for such offences is usually a four month suspension and two months in turn suspended for 12 months.

You are a most impressive person with a history of decades as a greyhound trainer and with no previous offences alleged. Mr Hogan, on your behalf, has put before us references of the highest caliber from very well-known and highly credentialed people in the greyhound racing industry. The whole affair has understandably distressed you greatly.

However, the Rule is there for a purpose which would appear to be to allow stewards to conduct the taking of out of competition samples. General deterrence is an important consideration and must be borne in mind. Further, contaminated meat is a well-known hazard dating back several years. We note that you now purchase kangaroo meat.

We are of the view that the penalty suggested by the stewards strikes the right balance. You are suspended for a period of four months, but that suspension is in turn suspended for a period of 12 months. There is no immediate suspension and we are confident that you will avoid any problems in the next 12 months.

The second issue is that of possible disqualification of “Blackjack Neo” from the event and the amendment of the finishing order, carrying with it the loss and reallocation of the $21,335 prize money.

This was a matter of argument of interpretation of the Act and of the relevant Rules and is a decision for the Chairperson alone, although I am most appreciative of the wisdom and assistance of my colleagues. However, it is my decision.

Rule 79A specifically deals with out of competition testing. Obviously it was thought necessary to provide a specific rule in relation to testing other than on race days.

Rule 79A(4) specifically applies where the sample is found to contain a permanently banned prohibited substance, which occurred here.

Rule 79A(4)(ii) provides that if this occurs, the dog shall be disqualified from any event for which it was nominated at the time the sample was taken. There is no argument that “Blackjack Neo” had been nominated for the event prior to the sample being taken, so that sub-rule (ii) has application. It seems to me that, as it uses the word “shall”, this is a mandatory rule. A dog sampled after nominating for an event and returning a positive swab shall be disqualified.

Sub-rule (iii) is a more sweeping provision. It seems to me to permit disqualification from an event if the stewards form the opinion that the permanently banned prohibited substance was likely to have had any direct and/or indirect effect on a greyhound at the time of the event. In other words, it could embrace pre-nomination sampling and disqualification could, result depending on the opinion of the stewards.

No such discretion exists in relation to post-nomination samples.

I appreciate that there is big prize money involved in the present case. I appreciate that “Blackjack Neo” was swabbed twice on race day and proved negative each time. However sub-rule (ii) is directed to post-nomination, out of competition sampling. The ultimate test results on race day or night are not of enormous relevance.

I can also appreciate what is said in the Act and how it was interpreted in the VCAT decision of GRV v RADB Greyhound Racing 2016 VCAT 1845.

However, the situation in the present case is that there has been a breach of a rule where disqualification is mandatory if the positive sample is taken after nomination. It would apply even if, say, the greyhound was ultimately scratched.

It is a very unfortunate outcome for you Mr Crisafi, and I repeat that my colleagues and myself regard you as a person of great integrity and with an excellent record.

However, the rule is clear and must be applied.

“Blackjack Neo” is disqualified from the event and the finishing order amended accordingly.

Mark Howard
Registrar, Victorian Racing Tribunal