1 March 2021

**RULING**

**HARNESS RACING VICTORIA**

**and**

**ALFIO GRASSO**

**Date of hearing:** 18 February 2021

**Panel:** Judge John Bowman (Chairperson) and Mr Des Gleeson.

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

Mr Damien O’Dea represented Mr Alfio Grasso.

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

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

**Particulars of charge:**

1. On 19 July 2019, the horse ‘Safari Rose’ was presented to race at the Mildura harness racing meeting in Race 1, the ‘DNR Logistics Pace (1st Heat)’;
2. At the relevant time you were the trainer of ‘Safari Rose’;
3. Prior to Race 1, the ‘DNR Logistics Pace (1st Heat)’, a blood sample was collected from ‘Safari Rose’ with subsequent analysis of that sample revealing a plasma total carbon dioxide (TCO2) concentration in excess of the allowable threshold;
4. As the trainer of ‘Safari Rose’ on 19 July 2019, you presented that horse to race in the ‘DNR Logistics Pace (1st Heat)’ at Mildura whilst not free of alkalinising agents, a prohibited substance when evidenced by total carbon dioxide (TCO2) present at a concentration in excess of 36 millimoles per litre in plasma.

**Plea:** Reserved

**RULING**

This matter involves AHRR 191 (1) and (2). It concerns pre-race blood samples taken from *Safari Rose,* trained by Mr Alfio Grasso, at Mildura on 19 July 2019. The samples were subsequently analysed by Racing Analytical Services Limited (RASL) and Australian Racing Forensic Laboratory (ARFL). Both are approved laboratories for the purposes of the relevant Rules. The analyses revealed TCO2 readings in excess of the authorised limit of 36 mmo/L.

I should observe at the outset that Mr O’Dea, Mr Grasso’s legal representative, is a South Australian practitioner. A hearing in person was requested. Through no fault of anyone involved, the COVID-19 restrictions, both locally and in relation to state borders, caused a considerable delay in relation to the disposition of this case.

Mr Grasso wishes to send the samples for analysis by Dr Ross Wenzel at Royal North Shore Hospital, Sydney. Neither is an approved drug testing laboratory for the purposes of the relevant Rule. Neither is accredited by the National Association of Testing Authorities.

AHRR 191 (1) provides in essence that a certificate from an approved laboratory is prima facie evidence of the matters certified – in this case, a TCO2 reading of 37.9 mmol/L as certified by RASL.

AHRR 191 (2) provides that a second such certificate from another approved laboratory is, together with the other certificate, conclusive evidence of the presence of a prohibited substance. In the present case, the second certificate is from ARFL and reveals a reading of 36.3 mmol/L.

Thus, in this case there is conclusive evidence of the presence of a prohibited substance.

Mr O’Dea argued that, as I understand it, he had been involved in a case where it was determined at VCAT that samples should be forwarded to Dr Wenzel at Royal North Shore Hospital. This was a of called *Tardio v HRV,* the order being made on 10 March 2020. However, no written reasons were given. Of course, I accept the accuracy of Mr O’Dea’s submission.

However, I am not prepared to make such an order. Even if the power so to do existed within the Rules (and I am far from satisfied that it does), I would not be minded so to do. I would refer to what was said by Garde P. in *Hope v Racing Victoria Limited (3)* [2019] VCAT 82 as follows:

“…on the face of things, I would very much prefer an accredited laboratory, with the equipment, processes and inherent expertise that it has, to undertake a test of this character”.

Garde P. was dealing specifically with a proposed referral to Royal North Shore Hospital.

Whilst this may not be an absolute statement that the referral sought would not comply with the Rule in question, it does show a decided reluctance to make such an order. It is a reluctance which I share. As I understand it, the relevant application was not pursued, and His Honour did not have to go further.

Of course, in *Hope* it was not the AHR Rules that were involved, but those relating to thoroughbred racing. The relevant AHR Rules seem to me to be even more clear cut. Two certificates from approved laboratories represent conclusive evidence of the presence of a prohibited substance.

I would also refer to the decisions of the Racing Appeals and Disciplinary Board in *Racing Victoria Stewards v Leek and Matthews* (delivered 10 October 2018) and *Racing Victoria Stewards v Pateman and Barton* (delivered 29 March 2019). In addition, there is the more recent decision of this Tribunal in *Racing Victoria Stewards v Laming* (delivered 21 April 2020). Each involves a proposed sending of samples to Dr Ross Wenzel and the Royal North Shore Hospital. Each application was dismissed. Admittedly each involved thoroughbred racing, but, as stated, if anything, the situation pursuant to the AHR Rules is even more clear cut. Prima facie evidence and then conclusive evidence with a second certification operate. Such conclusive evidence exists in the present case.

I prefer and accept the submissions of Ms Wood on behalf of the Stewards. Apart from the above problems facing this application, it is not disputed that the Royal North Shore Hospital is not accredited by the National Association of Testing Authorities to test animal blood or other products. Its accreditation extends only to human pathology. I also note and accept the opinion of Mr Paul Zahra, Scientific Manager of RASL, that analysing a sample that has been frozen and stored for 18 months would be “a futile exercise” and not represent the TCO2 concentration at the time of sampling.

For all of the above reasons, including the bearing in mind of the wording of the Rules, the application is dismissed.

Mark Howard
Registrar, Victorian Racing Tribunal