24 February 2021

**RULING**

**HARNESS RACING VICTORIA**

**and**

**JOHN & HELLEN SCOTT**

**Date of hearing:** 9 December 2020

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

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

Mr Mark Caldwell represented Mr and Mrs Scott.

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

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

**Particulars of charge: Charge 1 – Mr John Scott**

1. On 10 September 2019, the horse ‘De Lancome NZ’ was presented to race at the Shepparton harness racing meeting in Race 7, the ‘Hunter Rural Pace (1st Heat)’;
2. At the relevant time you were a licensed driver and authorised representative of Hellen Scott, the trainer of ‘De Lancome NZ’;
3. Prior to Race 7, the ‘Hunter Rural Pace (1st Heat), a urine sample was collected from ‘De Lancome NZ’ with subsequent analysis of that sample revealing a cobalt concentration in excess of the allowable threshold;
4. As the person left in charge of ‘De Lancome NZ’ on 10 September 2019, you presented that horse to race in the ‘Hunter Rural Pace (1st Heat)’ at Shepparton not free of cobalt, a prohibited substance when present at a concentration in excess of 100 micrograms per litre in urine.

**Charge 1 – Ms Hellen Scott**

1. On 10 September 2019, the horse ‘De Lancome NZ’ was presented to race at the Shepparton harness racing meeting in Race 7, the ‘Hunter Rural Pace (1st Heat)’;
2. At the relevant time you were the trainer of ‘De Lancome NZ’;
3. Prior to Race 7, the ‘Hunter Rural Pace (1st Heat)’, a urine sample was collected from ‘De Lancome NZ’ with subsequent analysis of that sample revealing a cobalt concentration in excess of the allowable threshold;
4. As the trainer of ‘De Lancome NZ’ on 10 September 2019, you presented that horse to race in the ‘Hunter Rural Pace (1st Heat)’ at Shepparton not free of cobalt, a prohibited substance when present at a concentration in excess of 100 micrograms per litre in urine.

**Plea:** Guilty

**RULING**

A Ruling is sought in these matters concerning the proposed forwarding of urine samples to Royal North Shore Hospital in Sydney. It is not a drug testing laboratory approved by the controlling body for the purposes of AHRR 191 (1) and (2).

As we understand it, the purpose of the proposed referral was not for testing of the appropriate substance but, as pointed out in the submissions on behalf of the Stewards, in relation to other properties in the samples. We would add that we were informed that the Scott’s were pleading guilty to the presentation charges.

The case itself concerns testing that has proved positive to cobalt. My recollection is that, when the matter was last before us on 23 November 2020, there was some discussion concerning the horse in question having a cancer problem. It was argued that potentially the cancer could have elevated the cobalt readings and testing of the urine samples should be permitted. There was also some discussion concerning refusals and reluctance to forward samples to the hospital in question for some thoroughbred racing cases involving cobalt. Reference was made to the comparatively recent Ruling in this Tribunal in the case of *Richard Laming* [21 April 2020] and the observations of Justice Garde in *Hope v Racing Victoria Limited* 3 2019 VCAT 82.

Of course, cases such as *Laming* and *Hope* occurred in the setting of thoroughbred racing under the Australian Rules of Racing. Whilst they may be relevant and helpful decisions, as pointed out by the Stewards initial attention should be directed to Australian Harness Racing Rules 191 (1) and (2). We shall not set them out in full. In essence, Rule 191 (1) makes a certificate prima facie evidence of the matters certified and (2) makes a second such certification conclusive evidence of presence of the prohibited substance.

In the present case, certificates were obtained from two approved drug testing laboratories. Both contain the certification of cobalt in excess of 200 ng/ml. Thus, there is both prima facie and conclusive evidence of the presence of a prohibited amount of cobalt. It is difficult to see how the referral of a sample tested by an unapproved laboratory can take matters much further. It might be argued that the type of testing sought, particularly in relation a bodily condition such as cancer, might lay the foundation for an argument that the reading would be reduced and thus culpability lessened. However, there is then another problem. The Stewards have asserted that the Royal North Shore Hospital is not accredited for the testing of equine urine. It is not so accredited by the National Authority of Testing Laboratories. That would appear to be an accurate assertion. That being so, we would receive test results that have minimal, if any, weight.

Unless some further material is put before us so as to establish that some erroneous assumption has been made, we are not prepared to order that the urine sample for the horse in question should be sent to Royal North Shore Hospital.

Mark Howard
Registrar, Victorian Racing Tribunal