8 September 2023

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**HEATH BOURKE**

**Date of hearing:** 30 August 2023

**Panel:** Justice Shane Marshall (Deputy Chairperson) and Dr June Smith.

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

Mr Heath Bourke represented himself.

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

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

**Particulars of charge:** 1. At all relevant times, you were a licensed trainer and driver with HRV and a person bound by the Australian Harness Racing Rules;

2. At the relevant time you were the trainer of “Pixiu”;

3. On 26 January 2023, the horse Pixiu was presented to race at the Stawell harness racing meeting in Race 2, the “Alabar Vicbred Platinum Maiden Pace (1st Div)”;

4. Following Race 2, a urine sample was collected from Pixiu with subsequent analysis of that sample revealing an arsenic concentration in excess of the allowable threshold;

5. As the trainer of Pixiu on 26 January 2023, you presented that horse to race in the Alabar Vicbred Platinum Maiden Pace (1st Div) at Stawell 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**

1. Mr Heath Bourke is a Grade B licensed trainer and driver and is a person bound by the Australian Harness Racing Rules (“AHRR”).
2. Mr Bourke at all material times was the trainer of the horse “Pixiu”. Pixiu competed in Race 2 at Stawell on 26 January 2023. A urine sample taken from the horse after the race showed the presence of arsenic in a concentration in excess of the allowable threshold.
3. Stewards of Harness Racing Victoria (“HRV”) have charged Mr Bourke with an offence under AHRR 190(1), which prohibits the presentation of a horse for an event while not free of a prohibited substance. Mr Bourke entered an early guilty plea to the charge.
4. The source of the substance was most likely the chewing of Copper Chrome Arsenic (“CCA”) treated timber posts by the horse. Mr Bourke is in the course of replacing the pine posts in his stables with steel posts and is no longer at risk of offending against 190(1) in the manner which occurred regarding at Stawell.
5. In setting a penalty, we take into account general deterrence and the importance of having a level playing field by keeping a drug free industry. Although a naturally occurring substance in most food items and other materials at low levels, arsenic beyond the threshold has the capacity to affect the condition and performance of a horse in a race.
6. In arriving at an appropriate penalty, the Tribunal also takes into account recent penalties in like cases, as well as the early guilty plea and Mr Bourke’s relatively good record over many years of training.
7. In all the circumstances, we impose a penalty of a fine of $2,000 with $1,500 suspended for a period of 12 months pending no further breach of the provisions of AHRR 190.
8. In addition, Pixiu is disqualified from Race 2 at Stawell on 26 January 2023.

Kathleen Scully

Assistant Registrar, Victorian Racing Tribunal