8 September 2023

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**LINDSAY ROGERS**

**Date of hearing:** 29 August 2023

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

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

Mr Lindsay Rogers 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 charges: Charge 1**

1. At all relevant times, you were a licensed trainer with HRV and a person bound by the Australian Harness Racing Rules;
2. At the relevant time you were the trainer of “Lester”;
3. On 16 October 2022, the horse Lester was presented to race at the Maryborough harness racing meeting in Race 9, the “Tandam Earthmoving Pace”;
4. Following Race 9, a urine sample was collected from Lester with subsequent analysis of that sample revealing an arsenic concentration in excess of the allowable threshold;
5. As the trainer of Lester on 16 October 2022, you presented that horse to race in the Tandam Earthmoving Pace at Maryborough 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. At all relevant times, you were a licensed trainer with HRV and a person bound by the Australian Harness Racing Rules;
2. At the relevant time you were the trainer of “Lester”;
3. On 25 November 2022, the horse Lester was presented to race at the Melton harness racing meeting in Race 4, the “Rich River Golf Club Vicbred Pace”;
4. Prior to Race 4, a urine sample was collected from Lester with subsequent analysis of that sample revealing an arsenic concentration in excess of the allowable threshold;
5. As the trainer of Lester on 25 November 2022, you presented that horse to race in the Rich River Golf Club Pace at Melton 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. At all relevant times, you were a licensed trainer with HRV and a person bound by the Australian Harness Racing Rules;
2. At the relevant time you were the trainer of Lester;
3. On 26 December 2022, the horse Lester was presented to race at the Geelong harness racing meeting in Race 2, the “Southern Cross Feeds Pace”;
4. Following Race 2, a urine sample was collected from Lester with subsequent analysis of that sample revealing an arsenic concentration in excess of the allowable threshold;
5. As the trainer of Lester on 26 December 2022, you presented that horse to race in the Southern Cross Feeds Pace at Geelong not free of arsenic, a prohibited substance when present at a concentration in excess of 0.30 micrograms per millilitre in urine.

**Pleas:** Guilty

**DECISION**

Mr Lindsay Rogers, you have pleaded guilty to three breaches of Australian Harness Racing Rule (“AHRR”) 190(1). In each instance, the prohibited substance involved was arsenic. These three positive returns occurred in comparatively quick succession.

The first positive return was obtained in a post-race urine sample taken from the horse, “Lester”, after Race 9 at Maryborough on 16 October 2022. Lester in fact won the race.

Prior to Charge 2 occurring, you had been notified by the Stewards as to the details of Charge 1, but you had also been told in effect that you could continue to race the horse if you so chose. There had been some discussion as to the possible source of the arsenic, including the possibility of it arising from a chewed fence post. You had taken some measures to removing this situation.

Charge 2 arose from a swabbing of Lester at Melton on 25 November 2022, the horse having competed in Race 4 in which it ran fifth. Again, the swab proved positive to arsenic above the allowable threshold.

However, before the completed test return had been drained, Lester competed in Race 2 at Geelong on 26 December 2022, a race which it won. Again, a swab proved positive to arsenic above the allowable threshold but at a reduced level to that obtained at Melton. In the meantime, you had been carrying out work and the restabling of two horses in an endeavour to prevent a reoccurrence of the offence.

The end result is that the source of the arsenic effectively remains a mystery. The treated and chewed upon fence post had looked likely suspect, but steps taken, such as moving the horses, did not solve the problem. Water flowing in from another property was also considered a source. We should add that your property is on old gold mining land near Ballarat.

We accept that you have made all sorts of enquiries as an endeavour to solve the problem. These endeavours include the outlaying of in excess of $30,000 in constructing some new stables. You have had help from various people and followed your own lines of inquiry. The situation has been complicated by your recently developing serious back complaint which you attribute to the additional work you had been performing in relation to the arsenic problem. Your back injury resulted in hospital admission and back surgery. You still have back problems despite the surgery.

You are aged 66 years and live on the property with your wife. She is working. You have no other source of income. You have an adult family and are receiving some assistance from family members.

You have had an interest in harness racing, but engaged in other work for approximately 30 years. You then became licensed as a stablehand in March 2016 and became a Grade B trainer in October 2017. You have an excellent record with no prior offences of any substance. The whole arsenic episode has cost you a lot of money and a lot of effort.

In all the circumstances, we have arrived at the following penalties.

On Charge 1, you are fined the sum of $2,000, but of that amount $1,500 is suspended for a period of 12 months. It will only be activated if you commit a similar offence during that period.

On each of Charges 2 and 3, you are fined the sum of $2,000, but each of those penalties is wholly suspended for a period of 12 months and will only be activated if you commit a similar offence during that period. We are confident that you will not.

Pursuant to AHRR 195, Lester is disqualified from Race 9 at Maryborough on 16 October 2022, Race 4 at Melton on 25 November 2022 and Race 2 at Geelong on 26 December 2022. In each instance, the finishing order is amended accordingly and the prize money is forfeited or to be refunded.

Kathleen Scully

Assistant Registrar, Victorian Racing Tribunal