26 March 2024

**DECISION**

**HARNESS RACING VICTORIA**

**and**

**WAYNE POTTER**

**Date of hearing:** 1 March 2024

**Panel:** Judge John Bowman (Chairperson).

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

 Mr Damian Sheales appeared on behalf of Mr Wayne Potter.

**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 with HRV and a person bound by the Australian Harness Racing Rules;

2. At the relevant time you were the trainer of ‘*The Locomotive*’;

3. On 19 December 2022, the horse ‘*The Locomotive*’ was presented to race at the Maryborough harness racing meeting in Race 1, the ‘Aldebaran Park Dancinginthedark M Vicbred Super Series (2YO Trotting Colts & Geldings) (1st Heat)’;

4. Following Race 1, a urine sample was collected from ‘*The Locomotive*’ with subsequent analysis of that sample revealing the presence of Tapentadol;

5. As the trainer of ‘*The Locomotive*’ on 19 December 2022, you presented that horse to race in the ‘Aldebaran Park Dancinginthedark M Vicbred Super Series (2YO Trotting Colts & Geldings) (1st Heat)’ at Maryborough not free of the prohibited substance Tapentadol.

**Plea:** Guilty

**DECISION**

Mr Wayne Potter, you are pleading guilty to a breach of AHRR 190(1) – presentation of a horse for a race when it is not free of prohibited substances.

The prohibited substance in the present case is Tapentadol. The horse in question is “The Locomotive”, at the relevant time a two-year-old trotter trained and part owned by you.

The relevant race in which it was competing was Race 1 at Maryborough on 19 December 2022. It was a very short priced favourite and the winner of the race. The race was a heat of a series leading to a Group One final – to give it the full name, the Aldebaron Park Dancininthedark M Vicbred Super Series for 2 year old colts and geldings. The Locomotive also started a warm favourite in the final, which it won, and which took place at Melton on 31 December 2022. When the ultimate report of the positive swab from Maryborough on 19 December 2022 was received, The Locomotive was then disqualified from the win in the final on 31 December 2022, in addition to disqualification from the race following which the sample was taken on 19 December 2022.

Thus, the horse was disqualified from the two races in which it had been first past the post. I understand that the first place prize money for the final on 31 December 2022 was $50,000, apart from the prestige associated with a Group 1 victory.

It is essentially accepted that the positive return for this not frequently encountered prohibited substance came from your handling some tablets for a headache. Your colleague, Mr Paul Tonkin, who accompanied you to the track on 19 December 2022, had given you a tablet or some tablets for a headache which you were suffering and you handled this medication, which you took. This seems to have been when travelling to the Maryborough track or shortly after arrival. The Stewards do not contest that this is the most likely source of the ultimate positive swab.

It is then unfortunate that the analysis of the swab taken from The Locomotive on the day that it had won the heat was not completed prior to the running of the final. Had at been, it seems likely that The Locomotive would not have contested the final and some other horse may have gained a start.

You have an excellent record dating back to the 1980’s. You have been both a trainer and driver, although in recent years you have not driven.

As stated, your record is excellent and it is accepted that this positive return resulted from a completely unintentional exposure to a prohibited substance.

Specific deterrence scarcely seems relevant. However, the industry generally must be conscious of the risks associated with the handling of medication for humans leading up to and on the day of a horse competing.

I am completely confident that you are now well and truly aware of this. Further, a horse of which you are part owner and trainer has been deprived of a Group 1 victory and this, no doubt, has brought the message home to you well and truly.

In all the unusual circumstances of this case, and including the impact of what you have already suffered, it seems to me that the penalty sought by Mr Sheales, on your behalf, is appropriate.

You are fined the sum of $2,000, with $1,500 of that suspended for a period of 12 months. This penalty also seems to be in accord with the decision of Ivan Belbin (dated 4 January 2023) of the Tasmanian Racing Appeals Board.

Finally, The Locomotive is disqualified from each relevant race as discussed above, and the finishing order in each is amended accordingly.

Forfeiture of prize money from the Group 1 event may well be inevitable. I will hear any further argument in that regard, but it seems almost inevitable that the prize money from Race 1 at Maryborough on 19 December 2022 and the prize money from the event at Melton on 31 December 2022 will be forfeited and the finishing orders amended accordingly.

Mark Howard

Registrar, Victorian Racing Tribunal