

HARNESS RACING VICTORIA ("HRV")

RACING APPEALS AND DISCIPLINARY BOARD ("RAD BOARD")

EXTRACT OF PROCEEDINGS

DECISION

HARNESS RACING VICTORIA

AND

TIM BOLITHO

HEARING BEFORE HRV RAD BOARD

WEDNESDAY, 3 OCTOBER 2018

RAD BOARD PANEL

Ms Alanna Duffy (Chairperson)
Judge Graeme Hicks (Deputy Chair)
Dr Hugh Millar (Panel Member)

REPRESENTATIVES OF THE PARTIES

Mr Neal Conder – appeared for HRV Stewards

Mr Tim Bolitho - appeared on his own behalf

Chairperson: Rule 191 provides that certificates furnished under the rule are conclusive or prima facie proof of the matters therein. We accept in this case that the certificate in relation to the race-day sample is conclusive evidence of the matters therein. Accordingly, we accept that the horse was not presented free of prohibited substances at Horsham on 23 November 2017.

However, Rule 191(7) provides, "Notwithstanding the provisions of this rule, certificates do not possess evidentiary value nor establish an offence, where it is proved that the certification procedure or any act or omission forming part of or relevant to the process resulting in the issue of a certificate, was materially flawed."

There have been determinations made about the operation of that subrule in the case of Roots that was provided by Mr Conder during the proceedings. That is a decision of the Racing Appeals Tribunal in New South Wales (6 July 2012). Helpfully, that decision has set out the questions that need to be determined in this situation, such as, "Does the rule in 191(7) extend to flaws in the sampling process and if it does, who then bears the onus of proof in relation to establishing that the sample is materially flawed?"

Now, we accept, based on that decision, that the operation of Rule 191(7) extends to the taking of the sample and that the onus of proof (on the balance of probabilities) to establish that there has been a material flaw falls to somebody in Mr Bolitho's position.

We note that in this case it was a high reading, approximately twice the amount of arsenic allowed under the rules, and in our view, the level of the reading is relevant to determining whether the process is materially flawed. To be materially flawed, any contamination must be at a sufficient level of arsenic to exceed the threshold.

In this case, the evidence does not establish what

the contaminating substance was in the sample. We rely on the expert evidence and circumstantial evidence given by Associate Professor Cate Steel that there is only a remote chance of any substance entering the sample at the time it was taken that could result in the level of arsenic detected in the sample in this case. For these reasons, we are comfortably satisfied on the balance of probabilities that Mr Bolitho is guilty of the charge.

We have taken into account all the submissions that have been made in relation to penalty, in particular we have considered the purpose of the rules in relation to prohibited substances and they are that harness racing be conducted fairly, safely and on a level playing field. We have also taken into account Mr Bolitho's good record, although we note that there has been a similar offence involving the same horse. However, it is accepted that there is certainly the possibility of inadvertent administration and we also acknowledge the efforts that Mr Bolitho has taken to try to remedy the situation. We understand that you are in a difficult situation.

Nonetheless there is a need for both general and specific deterrence. We have decided, given all the circumstances, that an appropriate penalty in this case is a \$3000 fine with \$1000 of that suspended for 12 months. As has been mentioned, Mr Bolitho, part of the fine that was suspended on the last occasion will now apply and we are not going to interfere with that.

We also will make an order that the horse, All Eyes and Ears, be disqualified from race 4 at Horsham on 23 November 2017, and the places be amended accordingly.

(END OF EXTRACT)