

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

REVIEW AND REGULATION LIST

VCAT REFERENCE NOS. Z626/2016 & Z762/2016

CATCHWORDS

Australian Harness Racing Rules, Harness racing, prohibited substances in horse's urine, disqualification of trainer, disqualification of horse from race, plea, appropriateness of disqualifications.

APPLICANT IN Z626/2016	Daniel Neagoe
APPLICANT IN Z762/2016	Sloys Company Pty Ltd
RESPONDENT	Harness Racing Victoria
WHERE HELD	Melbourne
BEFORE	Gerard Butcher, Senior Member
HEARING TYPE	Hearing
DATE OF HEARING	7, 8 and 9 February 2017
DATE OF ORDER	2 May 2017
CITATION	Neagoe v Harness Racing Victoria (Review and Regulation) [2017] VCAT 535

ORDER

The decision of the Harness Racing Victoria Racing Appeals and Disciplinary Board made on 22 July 2016 is affirmed.


Gerard Butcher
Senior Member



APPEARANCES:

For Applicants

Ms Valerie Heath of Counsel

For Respondent

Ms Amy Wood of Counsel

REASONS

BACKGROUND

- 1 On 30 August 2015, the horse Hot Shot Woman was entered to race at the Tabcorp Park Melton harness racing meeting in Race 5, the "Betterthancheddar" @ Alabar Breeders Crown series 18 2 year old Fillies Final" (**the race**).
- 2 This was a Group 1 race. Hot shot Woman took second place in the race. Second place carried prize money of \$43,200.00.
- 3 At the relevant time, Daniel Neagoe was the trainer of Hot Shot Woman. At the relevant time Sloys Company Pty Ltd was the owner of Hot Shot Woman.
- 4 Following the race, a urine sample was collected from Hot Shot Woman. Subsequent analysis of this sample revealed the presence of Amphetamine, Hydroxyamphetamine, Methamphetamine and Hydroxymethamphetamine (**the substances**).

THE CHARGES

- 5 Mr Neagoe was charged with a breach of Rule 190(1) of the *Australian Harness Racing Rules* (**The Rules**) which states;
"A horse shall be presented for a race free of prohibited substances".
- 6 (There was another charge concerning the keeping of a log book. This review is not concerned with that charge).

THE SUBSTANCES

- 7 There was no argument as to the nature of the substances. Amphetamine is a metabolite of Methamphetamine. Hydroxyamphetamine and Hydroxymethamphetamine are metabolites of amphetamine, and methamphetamine respectively. The ultimate present substance, therefore, is methamphetamine.
- 8 There was no argument that the substances are prohibited substances under Rule 188A(1)(a) of the Rules nor that any threshold level as governed by Rule 188A(2) applies. Expert evidence was received which leads the Tribunal to conclude that the substances are prohibited substances and that their presence, no matter how low the amount, leads to the charge under Rule 190(1).

ABSOLUTE LIABILITY

- 9 The failure to present a horse for a race free of prohibited substances has consistently been found to be one of absolute liability. The Tribunal sees no reason to diverge from this approach.

THE DECISION OF THE RAD BOARD

- 10 On 15 July 2016, the Harness Racing Victoria Racing Appeal and Disciplinary Board (**the RAD Board**) found Mr Neagoe guilty of the charge of failing to present Hot Shot Woman for the race free from prohibited substances. As set out below, Mr Neagoe does not contest this finding.
- 11 On 22 July 2016, The RAD Board imposed a six month disqualification on Mr Neagoe with immediate effect. Hot Shot Woman was disqualified from the race. The disqualification of Mr Neagoe is the subject of proceeding Z626/2016 before the Tribunal and the subject of the disqualification of Hot Shot Woman from the race is the subject of proceeding Z762/2016.

THE DISQUALIFICATION OF MR NEAGOE

- 12 Mr Neagoe did not seek a stay of his disqualification and that the disqualification has been served in its entirety.

THE DISQUALIFICATION OF HOT SHOT WOMAN FROM THE RACE

- 13 The prize money of \$43,200.00 is being held by Harness Racing Victoria pending the outcome of the proceeding.

PLEA AGREEMENT

- 14 A plea agreement was entered into between Mr Neagoe and Harness Racing Victoria and placed before the Tribunal in the following terms:

Before the Tribunal, Mr Neagoe has entered into a plea agreement with Harness Racing Victoria (HRV) that he accepts the essential facts constitute a proved breach of AHRR 190(1) and HRV concedes that

- (1) environmental contamination could have been a cause (of the presence of a prohibited substance in the horse Hot Shot Woman on 30 August 2015);
- (2) it will not contradict the submissions for Mr Neagoe on the relevance of the Llewellyn/McHenry findings as a proximate source of contamination;
- (3) it will not argue that any greater penalty than the RAD Board imposed is appropriate;
- (4) any period of suspension or disqualification imposed (by the Tribunal) commence from 22 July 2016 and any period of disqualification served to be deducted from any penalty imposed by the Tribunal

THE HEARING

- 15 The hearing of these proceedings took place over three days with all parties represented by Counsel. Subsequently written submissions were received on behalf of all parties.

EVIDENCE ON BEHALF OF HARNESS RACING VICTORIA

- 16 Mr Paul Zahra, an analytical chemist holds the position of Scientific Manager of Racing Analytical Services Ltd gave evidence by way of witness statement concerning the analysis of the urine samples taken from Hot Shot Woman, the results of the analysis and the conclusion that sample V353949 contained a prohibited substance as previously described. Mr Zahra adopted his statement and was briefly cross-examined.
- 17 Part of Mr Zahra's evidence was to the effect that after the analysis carried out by Racing Analytical Services Ltd, a reserve portion of sample V353949 was sent to the Hong Kong Jockey Club Racing Laboratory for confirmatory analysis. This analysis confirmed the initial analysis.
- 18 Professor Ted Whitem, Professor of Veterinary Biological Sciences and Head of the Veterinary School at the University of Melbourne gave evidence by telephone from the United States, adopting a report prepared by himself and Associate Professor Catherine Steel. Professor Whitem was cross-examined. The report was essentially an explanation of the possible effects of the drugs on horses. Reference was also made to the possible purposes of illegal "doping" being:
- to reduce fatigue and improve performance;
 - in higher doses introduced by a third party to deliberately result in drug detection or impair performance.
- 19 Under cross-examination Professor Whitem conceded:
- the level of prohibited substance detected in the sample level from Hot Shot Woman was very low and was unlikely to effect the horse's performance on the day;
 - there was a number of possibilities in relation to how the prohibited substance came into the horses urine sample, including environmental contamination;
 - the prohibited substances in question are not commonly detected. Professor Whitem here qualified his concession on this point by observing that this means that presence of the prohibited substance is not commonly a result of environmental contamination;
 - amphetamines are stable in the environment.
- 20 Professor Whitem concluded that it was not possible to determine the source, timing and other variables of the "dose", except that he was able to say it was not a large dose immediately prior to the race.
- 21 Mr Stephen Svanosio, Investigative Steward, gave evidence by adopting a witness statement and was cross-examined. His evidence was essentially concerned with the formalities of the process.

EVIDENCE ON BEHALF OF MR NEAGOE

- 22 Dr Andrew Clarke gave expert evidence that the most probable cause of the presence of the prohibited substances was environmental contamination and that a possible cause was a much larger dose given earlier. Dr Clarke opined that there would be no purpose to a large dose given earlier due to the short period of its effect.
- 23 Under cross-examination, Dr Clarke conceded that there was no direct evidence as to how the prohibited substances came to be present. On his conclusion that environmental contamination was the most probable cause, Dr Clarke conceded that this was his conclusion only because of the fact that the prohibited substances were only detected in “trace amount”. Dr Clarke conceded that there were “lots of possibilities” as to the cause. Dr Clarke did not carry out any environmental analysis.
- 24 Mr Daniel Neagoe gave evidence as to his background and the present state of his health. He is 24 years old and suffers from a condition that precludes him from presently working as a trainer. He hopes to resume this pursuit one day.
- 25 Mr Neagoe worked for Sloys Pty Ltd as a trainer of its horses. They are based in New South Wales.
- 26 Three weeks before 30 August 2015, three horses were transported from stables in New South Wales to a property in Melton South. Mr Neagoe did not accompany them but rather transferred them (officially) into the care of another registered trainer until he joined them on 29 August 2015. Thereafter, Mr Neagoe managed the horses.
- 27 Mr Phillip Chirop gave what was to be character evidence by telephone. Mr Chirop is an A Grade Trainer with more than 30 years experience in the industry. He has known Mr Neagoe for many years. Surprisingly, Mr Chirop stated that he did not know how Mr Neagoe had been given a licence to train at a big stable of horses as he (Mr Neagoe) was a little immature to carry out the role and that he was not vigilant or experienced enough to control employees. Under cross-examination, Mr Chirop conceded that he had no interaction with the horses while they were at the property in Melton South and that he had never been to the stables in New South Wales.

FINDINGS

A possible environmental cause

- 28 There was common ground that there had been drug activity on a property neighbouring the Melton South property where Hot Shot Woman and two other horses were stabled for three weeks. It was postulated by counsel for Mr Neagoe and Sloys Company Pty Ltd that this was the cause of environmental contamination leading to the prohibited substances being detected in Hot Shot Woman’s urine.

- 29 On the evidence before me, I am unable to be satisfied that this is more than a possibility. Without any environmental analysis I am unable to attribute any probability to it. Indeed, I am unable to conclude that any one cause is any more probable than any other. The simple answer is that the cause is unknown.

Mr Neagoe's culpability

- 30 Mr Neagoe has admitted the charge and accepts that it is one of absolute liability. Therefore, the charge must be found proved.

The purpose of the Rule

- 31 Rule 190(1) exists for the purpose of ensuring that:
- a the integrity of racing is protected;
 - b racing is conducted on a level playing field;
 - c horses race without the assistance of drugs;
 - d racing is conducted safely, referring particularly to the safety of horses and drivers but including all participants; and
 - e racing is conducted fairly from the perspective of the betting public so that a horse's performance will not vary from start to start depending on whether or not a particular substance or medication has been administered to it.¹
- 32 In this case, the evidence satisfies me that the performance of Hot Shot Woman was not effected and that safety was not an issue. However, the perspective of the betting public that a horse may have performed better because of drugs is central. The betting public does not have the benefit of extensive expert evidence as the Tribunal has. The public perception is that drugs alter the outcomes of races.

Determination factors

- 33 The offence is one of absolute liability and Mr Neagoe pleaded guilty. However, the cause of the presence of the prohibited substance in the horse's urine is unknown. Also, I am not satisfied that Mr Neagoe will ever return to training. I therefore do not consider the specific deterrence is an important factor.
- 34 General deterrence is far more significant. Trainers must be made aware that vigilance in such matters is of the utmost importance if the consequences of Rule 190(1) are to be avoided.
- 35 The public is protected by enforcement of Rule 190(1).

¹ Galea v Harness Racing Victoria VCAT unreported Judge Nixon, 3 September 2013.

Disqualification of Mr Neagoe

36 I am satisfied that the determination of the RAD Board in disqualifying Mr Neagoe for six months is an appropriate one having regard to the foregoing. Therefore this aspect of the decision is affirmed. I note that the period of disqualification has been served.

Disqualification of Hot Shot Woman

37 Rule 195 of the Rules states:

A horse which has been presented for a race shall be disqualified from it if blood, urine, saliva or other matter or sample or specimen taken from the horse is found to contain a prohibited substance.

38 This is a mandatory provision. The Tribunal has no discretion. The horse must be disqualified. This aspect of the decision of the RAD Board is also affirmed.

Gerard Butcher
Senior Member



