

**HARNES RACING VICTORIA (“HRV”)**

**RACING APPEALS AND DISCIPLINARY BOARD (“RAD BOARD”)**

**HRV STEWARDS**

**AND**

**Mr DANIEL NEAGOE**

HEARING BEFORE RAD BOARD

27<sup>th</sup> May 2016

RAD BOARD PANEL

Mr B W Collis QC (Chairman)

Mr Kevin Carson (Panel Member)

Mr Nicholas Rolfe (Panel Member)

REPRESENTATIVES OF THE PARTIES

Mr Andrew Rogers – appeared for HRV Stewards

Ms V M Heath of Counsel instructed by Mr G Harris of G.J. Harrison & Co, Solicitors,  
Katoomba N.S.W. – appeared for Mr Daniel Neagoe.

## **CHARGES LAID BY HRV STEWARDS AGAINST Mr DANIEL NEAGOE**

**CHARGE 1** (dated 8/12/2015) breach of Rule 190(1) of the Australian Rules of Harness Racing (“the Rules”) which states: “A horse shall be presented for a race free of prohibited substances”.

### **PARTICULARS**

- a) On 30/8/20213 the horse “Hot Shot Woman” was presented to race in Race 5 of the Tabcorp Park Melton Harness Racing Meeting.
- b) At that time Mr Neagoe was the trainer of such horse.
- c) Following Race 5 a urine sample was collected from the horse “Hot Shot Woman” sample no. V353949.
- d) Subsequent analysis of such sample revealed the presence of prohibited substances, namely Amphetamine, Hydroxyamphetemine, Methamphetemine and Hydroxymethamphetemine.

The RAD Board has also referred to Rules 190(2) and (4) of the rules, Rule 188A(1) of the Rules namely “the following are prohibited substances” –

- a) “substances capable at any time of causing either directly or indirectly an action or effect, or both an action and effect, within one or more of the following mammalian body systems”. (Eg the nervous system, the respiratory system, the cardiovascular system). And the provisions of Rule 191 of the Rules.

**CHARGE 2** – (dated 8/12/2015) – breach of Rule 190B(1)(b) of the Rules namely in August 2015 failing to keep and maintain a required log book.

### **JURISDICTION OF THE RAD BOARD**

S.50M of the Racing Act 1958 (Vic) (as amended by act No 52 of 2009) and Rule 49 including sub-section (5) of the Victorian Local Rules.

## **PLEAS**

Mr Daniel Neagoe through his counsel, Ms Heath, pleaded

- a) Not guilty to Charge 1
- b) Guilty to Charge 2

## **DOCUMENTATION TENDERED TO THE RAD BOARD**

### **A) By HRV Stewards**

- i) Booklet of 148 pages in total including
  - a. Notices of Charges laid by HRV Stewards against Mr Daniel Neagoe dated 8/12/2015 and particulars of each charge;
  - b. Statement of HRV stewards Mr Stephen Svanosio dated 8/12/2015 together with 20 exhibits.
  - c. Statement of Mr Paul Zahra dated 30/11/2015 together with exhibits.
  - d. Statement of Professor Ted Whitten and Associate Professor Catherine Steel dated 19/11/2015.
  - e. Decision of Luke Alcorn 3/3/2014 S.A. Appeals Tribunal.
  - f. Decision of Roy Roots Rocino Racing Appeals Tribunal N.S.W. 6/7/2012.
  - g. Decision of Michael Doltoff dated 10/12/2007

### **On behalf of Mr D Neagoe**

- i) Documents forwarded by HRV stewards to Mr G Harris under cover of a letter dated 12/2/2016.
- ii) Report prepared by Dr Andrew Clarke dated 8/4/2016 together with a number of attachments.

## **HEARING 27/5/2016**

A number of witnesses gave evidence to the RAD Board including Professor Ted Whitten, Mr Paul Zahra and Dr Andrew Clarke. The RAD Board was impressed with Professor Whitten, who is without peer in Victoria and most probably Australia, regarding veterinary pharmacology. The RAD Board accepts his evidence that although a low level of prohibited substance was found to be present in the urine

sample taken from the hose “Hot Shot Woman” on 30/8/2015 (No V353949) this was not necessarily inclusive of level of prohibited substance when it initially became present in such horse. At the conclusion of such evidence the RAD Board adjourned the further hearing of this matter to enable the parties to make submissions as to whether a breach of Rule 190(1) of the Rules occurred given the low level of prohibited substance found in such relevant urine sample.

#### **FURTHER DOCUMENTATION TENDERED ON BEHALF OF Mr D NEAGOE**

Such documentation included a statement of Mr D Neagoe dated 5/7/2016, a supplementary report of Dr Andrew Clarke dated 5/7/2016. Report of Dr Michael J Lew, Senior Lecturer Department of Pharmacology and Therapeutics, University of Melbourne, together with attachments. Upon reading and receiving this additional documentation the RAD Board finds that the thrust of the same was the level of prohibited substances found to be present in sample No. V358949 was extremely low (i.e. approximately 1ng/ml) and such low level was consistent with accidental contamination and furthermore would have had no effect on “Hot Shot Woman’s” performance in Race 5 on 30/8/2015.

#### **SUBMISSIONS OF HRV STEWARDS DATED 6/7/2016 TO WHICH WERE ATTACHED A NUMBER OF DECISIONS REFERRED TO THEREIN**

The RAD Board has considered all of these submissions but by way of summary makes reference to the following:

- a) The hypothesis raised by Dr Clarke in his report dated 5/7/2016, that the relevant sample could have been contaminated during the collection process on 30/8/2015 was not advanced at the hearing of the 27/5/2016. The RAD Board finds that this submission is correct and furthermore that it did not understand that Ms Heath would be submitting that this may have occurred.
- b) The Certificate of Analysis provided by RASL (28/9/2015), the HKJC Racing Laboratory (14/10/2015) are conclusive evidence of the presence of a prohibited substance (see Rule 191 of the Rules).
- c) Rule 190(4) of the Rules provides that “an offence under sub-rule (2) ... is committed regardless of the circumstances in which the prohibited substance came to be present in or on the horse”

- d) His Honor Judge Nixon found in the matter of William Galea (VCAT 3/9/2013) that an offence under rule 190(1) of the Rules is one of “absolute liability”. (see also decision Alcorn, S.A Board Appeals Tribunal 3/3/2014 and Buttigeig, S.A. Racing Appeals Tribunal 2014).
- e) The possibility of the provision of the relevant prohibited substances was due to environmental contamination (outside of Mr Neagoe’s control) is speculation. (see Finn v GRV, GRV RAD Board 2016).

**SUBMISSIONS OF MS V M HEATH OF COUNSEL DATED 11/7/2016 ON BEHALF OF MR D NEAGOE TOGETHER WITH VOLUMIOUS REFERENCES ETC**

The RAD Board has considered all of these submissions but by way of summary makes reference to the following:

- a) The sample V353949 demonstrated an extremely low level of relevant prohibited substances which were of miniscule proportions.
- b) The RAD Board ought to find (for the reasons advanced) that the opinions of Dr Clarke and Dr Lew be preferred that such level of prohibited substances could not have had any effect on the performance of the horse “Hot Shot Woman” in race 5 on 30/8/2015.
- c) Such low level of prohibited substance found in sample V353949 was consistent with accidental and/or environmental contamination. It was further submitted that Mr Neagoe was unaware of amphetamine use on a neighboring property.
- d) Whether a particular sample is “positive” of amphetamine or methamphetamine depends upon factors peculiar to the testing laboratory and may vary from laboratory to laboratory.
- e) **Construction of Rule 190 of the rules.** – The purposive reading of such Rule has at its heart a fundamental principle of fairness, that it must be possible for a trainer to avoid breaching Rule 190(1) and (2) of the Rules (even though the Rule does operate on the facts). “Horses do not live in bubbles and trainers cannot avoid exposure to trace contaminants – the act of presenting a horse for racing involves exposure to environments outside the trainer’s control.”

No floodgates will be opened by the recognition of the issue of construction submitted which should be adopted in this case (see further para 106).

- f) **Uncertainty and illegality etc.** – Rule 190(2) does not apply to tiny trace amounts in circumstances (as submitted), where a prohibition does not serve the purposes of the Rules.
- g) **Response to HRV Submissions** – The RAD Board notes the same.

It did not consider the penalty submissions at the time.

## **DECISION OF RAD BOARD**

1. Rule 309 of the Rules provides:

“In the interpretation of a rule a construction that would promote the purpose or object underlying it, whether expressly stated or not or which would facilitate or extend its application, is to be preferred to a construction that would not promote the purpose or object or which would impeded or restrict its application.
2. The RAD Board has consistently stated the purpose of the Rules with respect to prohibited substances, these have been accurately set out in the submissions of HRV Stewards and Ms V.M. Heath of Counsel and Judge Nixon in GALEA.
3. There is clearly no threshold in regards prohibited substances referred to in Rule 188A(1)(a) of the Rules.

Professor Whittem and Associate Professor Steel have stated that the substances amphetamine, Hydroxyamphetamine, methamphetamine and Hydroxymethamphetamine are prohibited substances by reason of the provisions of Rule 188A(1)(a). No argument has been advanced to the contrary. Rule 188A(2) provides for thresholds.
4. The RAD Board finds that there is no threshold as regards the prohibited substances set out in Charge 1 and that by reason of the rules there is absolute liability for such substances to be found in a horse presented for a race.
5. The RAD Board, after considering all of the evidence adduced before it, finds on the balance of probabilities that the taking of the post-race urine sample (V353949) on 30/8/2015, its subsequent storage and transportation prior to being transferred to RASL on 31/8/2015, the subsequent storage and analysis

of the same by RASL, the transfer of the reserve sample by RASL to HKJC Laboratory and the analysis of the same by the HKJC Laboratory was not materially flawed in any way. The RAD Board finds that the Certificates of Analysis issued by RASL and KHJC Laboratory (both of which are approved laboratories), are conclusive proof of the alleged prohibited substances found in the same pursuant to the provisions of Rule 191 of the Rules, and that such substances are prohibited substances pursuant to the provisions in Rule 188A(1)(a) of the Rules. Further it finds that Mr D Neagoe was the trainer of the horse "Hot Shot Woman" at the relevant times.

6. Accordingly the RAD Board finds on the balance of probabilities, after giving due weight to the *Briginshaw* principles, that Mr D Neagoe is guilty of the alleged breach set out in Charge 1 dated 8/12/2015.

Dated 15 July 2016

B W Collis QC  
Chairman

Mr Kevin Carson

Mr Nicholas Rolfe