

**GREYHOUND AND HARNESS RACING APPEALS TRIBUNAL
NEW SOUTH WALES**

TRIBUNAL: JUDGE J. C. MCGUIRE

ASSESSOR: MR J. SCHRECK

APPEAL OF MR J. MAGNISALIS

DECISION

Before the Tribunal is a severity appeal lodged by Jim Magnisalis, who appears in person. He was charged with an offence under Rule 83(2)(a) of the Rules of Greyhound Racing. That rule provides:

(2) The owner, trainer or person in charge of a greyhound –

(a) nominated to compete in an Event;

shall present the greyhound free of any drug.

On 3 August 2008 he presented Rocket Rudi for racing at The Gardens. The dog won race 6. Testing of the sample taken from the dog displayed the presence of the drug hydroxystanozolol. Without objection, the various sample kit documents and certificates of analyses were tendered before the stewards inquiry conducted on 9 December 2008.

The stewards had regard to a letter from Dr Craig Suann, Senior Official Veterinarian at Racing NSW, who stated:

*The finding of **hydroxystanozolol** in a urine sample from a greyhound would indicate the prior administration to the greyhound of a veterinary pharmaceutical containing the synthetic anabolic steroid stanozolol.*

Principally, stanozolol has actions on the central nervous system and the musculo-skeletal system, and would be categorised as an anabolic steroid. Hydroxystanozolol is a metabolite of stanozolol. Therefore, both stanozolol and hydroxystanozolol would be defined as drugs according to the Greyhound Racing Rules.

The Appellant had administered the offending substance to the dog some seven weeks prior to the race. He relied upon the advice of his veterinary surgeon, Dr Yore, that it was

safe to do so in that the drug had an anticipated life of some four weeks. Dr Yore told the Appellant, when he inquired about the safe period:

Oh, maximum a month, four weeks. It is a short-life anabolic; it will be out of the system in two or three weeks. Give it a month to be sure.

Dr Yore provided a letter, which was placed before the stewards inquiry. The Chairman of Stewards had occasion to remark, when referring to the advice received from Dr Yore:

Unfortunately, the case here is that you appear to have taken some advice from Dr Yore, and, as I said, unfortunately we have been in several situations recently where Dr Yore has given similar advice to participants which, unfortunately, has not been accurate.

At no stage in the course of the stewards inquiry did the Appellant seek to avoid his responsibility other than to rely upon the fact that he believed that the dog would be racing drug-free having regard to the veterinary advice that he received. He stated that he was not a punter; that he did not bet at all. In this appeal he is not seeking to avoid responsibility for his presentation of the dog being not drug-free. He is simply seeking to have the penalty ameliorated.

Trainers in situations such as present before this Tribunal often seek to rely upon veterinary advice received, as an excuse. The fact of the matter, however, is that the trainer has the ultimate responsibility. Incorrect veterinary advice does not constitute a shield. It is not an automatic protection from penalty if a dog is not presented drug-free.

It is the almost invariable result that a disqualification follows the presentation of a dog which is not drug-free. Indeed, this Tribunal is unaware of any breach of the subject rule which has not resulted in disqualification. It was the decision of the stewards to impose a fine, rather than a disqualification. It was not the judgement of the Tribunal. It may well be that an unfortunate precedent has been established.

The rules are designed to ensure drug-free racing, and it should not be regarded as a binding precedent that a fine will be considered by the Tribunal as appropriate. The Tribunal will not automatically rubber-stamp fines, and this is a matter which should be taken into account by any Appellant seeking to have a fine set aside or reduced.

As stated, in this case the Tribunal is not considering the question of whether a disqualification or a fine was the appropriate penalty. It is simply examining the appropriateness of the quantum of the fine imposed, that is, the fine of \$1,500.

The Appellant's conduct with regard to his total frankness before the stewards inquiry and before this Tribunal, his immediate plea of guilty, his remorse and contrition, his history of twenty years in the industry with an unblemished record, his reliance upon the advice from his veterinary adviser of many years, and his personal financial and family circumstances are such that the Tribunal considers the appropriate fine to be in the sum of \$1,000.

The Tribunal's decision in this matter is on the unique facts presented and should not be regarded as a precedent. The mere fact that the drug is present, no matter how, or why or when it was administered, constitutes the gravamen of the offence. Whether the drug was

administered innocently or otherwise, or whether it was considered that the drug would not be present at the time of the testing is irrelevant.

The affected dog has, if not an actual advantage, a potential advantage over other dogs. The rule is designed to ensure that drug-free racing is the norm.

It is the concern of this Tribunal that the confidence of the public in the greyhound racing industry be maintained. Owners, members of the public and punters must feel assured that the dogs which they own or support are not at a disadvantage in racing against dogs which may be carrying drugs.

The decision of this Tribunal is that the appeal is upheld to the extent that the fine is reduced from \$1,500 to \$1,000.

J. C. McGuire, Judge
14 January 2009