18 September 2020

**RULING**

**GREYHOUND RACING VICTORIA**

**and**

**MR BRADEN FINN**

**Date of hearings:** 25 August 2020 & 1 September 2020

**Panel:** Judge John Bowman (Chairperson) and Justice Shane Marshall (Deputy Chairperson).

**Appearances:** Mr Patrick Considine appeared on behalf of the Stewards

Mr Michael Bailey appeared on behalf of Mr Finn.

**Charges and particulars:** **AMENDED NOTICE OF CHARGES**

**Charge No. 1 of 4**

**Greyhounds Australasia Rule 83(2)(a)** which reads as follows:

**GAR 83 Greyhound to be free of prohibited substances**

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

 *(a)**nominated to compete in an Event;*

*(b) presented for a satisfactory, weight or whelping trial or such other trial as provided for pursuant to these Rules; or*

*(c) presented for any test or examination for the purpose of incapacitation or prohibition being varied or revoked*

 *shall present the greyhound free of any prohibited substance.*

**Particulars of the Charge being:**

1. You were:
	1. at all relevant times prior to 26 February 2020 and after 3 March 2020, a public trainer/breeder licensed by Greyhound Racing Victoria (licence number 42696);
	2. further and alternatively, at all relevant times prior to, during and after the period between 26 February 2020 and 3 March 2020, a person otherwise bound by the Greyhound Australasia Rules and Local Racing Rules.
2. You were:
	1. at all relevant times prior to 26 February 2020, the trainer of "More Deductions" (VHTFK);
	2. further and alternatively, at all relevant times prior to, during and after the period between 26 February 2020 and 3 March 2020, the person in charge of "More Deductions" (VHTFK).
3. "More Deductions" was nominated to compete in Race 6 at the Geelong Greyhound meeting on 28 February 2020 (**the Event**).
4. On 28 February 2020, "More Deductions" was presented at the Event not free of any prohibited substances, given that:

(a) A pre-race sample of urine was taken from "More Deductions" at the Event (V647566);

(b) Benzoylecgonine was detected in the Sample.

1. You were responsible for presenting "More Deductions" to the Event in breach of GAR 83(2)(a) in that:
	1. "More Deductions" was presented to the Event in accordance with and furtherance to your plan to that effect, agreed to with Mr Lachlan Vine shortly prior to your licence expiring on 26 February 2020, and while you were still the registered trainer of "More Deductions";
	2. further and alternatively, you were the person in charge of "More Deductions" on 28 February 2020 and it was brought to and competed in the Event at your instruction and direction.

**Charge No. 2 of 4**

**Greyhounds Australasia Rule 79A(4)** which reads as follows:

**Rule 79A Out of Competition Testing**

*(4) When a sample taken from a greyhound being trained by a licensed trainer or in the care of a registered person has been found to contain a Permanently Banned Prohibited Substance specified in sub-rule (2),*

*i. the trainer and any other person who was in charge of such greyhound at the relevant time shall be guilty of an offence.*

*ii. the greyhound shall be disqualified from any Event or any benefit derived from a trial or test for which it was nominated at the time the sample was taken.*

*iii. the greyhound may be disqualified from any Event in which it has competed subsequent to the taking of such sample where in the opinion of the Stewards, the Permanently Banned Prohibited Substance was likely to have had any direct and / or indirect effect on the greyhound at the time of the Event.*

**Particulars of the Charge being:**

1. You are and were at all relevant times, including on and around 15 April 2020, a public trainer/breeder licensed by Greyhound Racing Victoria (licence number 42696) and a person bound by the Greyhound Australasia Rules and Local Racing Rules (**the Rules**).
2. A sample was taken from "More Deductions" (VHTFK) as part of Out of Competition Testing conducted at your registered kennels on 15 April 2020 (**the Sample**).
3. You were at all relevant times, including on and in the days prior to 15 April 2020, the trainer, further and alternatively, the person in charge of "More Deductions".
4. The Sample was found to contain one or more Permanently Banned Prohibited Substances, within the meaning in the Rules, in that Cocaine, Benzoylecgonine and Ecgonine methyl ester were detected in the Sample.

**Charge No. 3 of 4**

**Greyhounds Australasia Rule 83(2)(a)** which reads as follows:

**GAR 83 Greyhound to be free of prohibited substances**

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

 *(a)**nominated to compete in an Event;*

*(b) presented for a satisfactory, weight or whelping trial or such other trial as provided for pursuant to these Rules; or*

*(c) presented for any test or examination for the purpose of incapacitation or prohibition being varied or revoked*

 *shall present the greyhound free of any prohibited substance.*

**Particulars of the Charge being:**

1. You are and were at all relevant times a public trainer/breeder licensed by Greyhound Racing Victoria (licence number 42696) and a person bound by the Greyhound Australasia Rules and Local Racing Rules.
2. You were at all relevant times, including on and immediately prior to 10 May 2020, the trainer, further and alternatively, the person in charge of "Brace and Bits" (VHUDD).
3. "Brace and Bits" was nominated to compete in Race Seven (7) at the Sale Greyhound meeting on 10 May 2020 (**the Event**).
4. On 10 May 2020, "Brace and Bits" was presented by you at the Event not free of any prohibited substances, given that:

(a) A sample of urine was taken from "Brace and Bits" at the Event (V661457);

(b) Benzoylecgonine was detected in the Sample.

**Charge No. 4 of 4**

**Greyhounds Australasia Rule 86(o)** which reads as follows:

**GAR 86 Offences**

**A person (including an official) shall be guilty of an offence if the person -**

*(o) has, in relation to a greyhound or greyhound racing, done a thing, or omitted to do a thing, which, in the opinion of the Stewards or the Controlling Body, as the case may be, is negligent, dishonest, corrupt, fraudulent or improper, or constitutes misconduct;*

**Particulars of the Charge being:**

1. You were:
2. at all relevant times prior to 26 February 2020 and after 3 March 2020, a public trainer/breeder licensed by Greyhound Racing Victoria (licence number 42696);
3. further and alternatively, at all relevant times, prior to, during and after the period between 26 February 2020 and 3 March 2020, a person otherwise bound by the Greyhound Australasia Rules and Local Racing Rules.
4. On 25 February 2020 you transferred the greyhound "More Deductions" (VHTFK) into the name of registered public trainer Lachlan Vine (243284) who is a friend which resided at the same address as you.
5. You did this as your GRV registration was due to expire on 26 February 2020.
6. You continued to train and care for the greyhound, "More Deductions", while it was registered with Lachlan Vine, including during the period between 26 February 2020 and 3 March 2020.
7. "More Deductions" was nominated for, competed and placed second in Race Six (6) at Geelong on 28 February 2020 (**the Event**).
8. On 3 March "More Deductions" was transferred back into your name once your registration had been renewed.
9. In participating in these actions, you have done a thing or engaged in conduct which in the opinion of the Stewards is:
	1. dishonest;
	2. fraudulent;
	3. improper; and / or
	4. further and alternatively, constitutes misconduct;

in that it misled the betting public as to who was the person training, and in charge of, the greyhound "More Deductions" between 25 February 2020 and 3 March 2020 and at the time it competed in the Event.

**Plea:** Reserved

**RULING – APPLICATION FOR MICHAEL BAILEY TO APPEAR FOR BRADEN FINN**

**25 August 2020**

The VRT has the discretion to grant leave to appear to any person. That does not mean that any person may successfully apply for leave for example, a disqualified former licensed person or a debarred lawyer would not ordinarily be granted such leave. It is not uncommon for administrative Tribunals to grant leave to appear to lay persons. It is also possible for lay persons to go off point and not confine themselves to matters relevant to the case with which a Tribunal is dealing with.

However, that is not a reason to refuse leave initially but it may be reason for a Tribunal to revoke leave to appear if a person after being informed that certain matters are unhelpful to the Tribunal nevertheless persists in raising them.

In this case Mr Finn has a particular reason for wanting Mr Bailey to appear. Mr Bailey is his best friend and he trusts Mr Bailey. Mr Bailey is also engaged in legal studies.

While some may think that it may be better to have someone who is not as close to Mr Finn to representing him, it is often difficult to obtain pro bono legal representation. However, irrespective of the result of this decision granting Mr Bailey leave to appear, it is not too late to try.

We propose to grant Mr Bailey leave to represent Mr Finn subject to his submissions and the evidence he seeks to adduce being relevant to the four changes before the Tribunal. Any subpoena sought to be issued by or behalf of Mr Finn in the first instance is to be referred to the Chairman. It is also foreshadowed that a time limit will be imposed in relation to the conduct of the hearing.

**1 SEPTEMBER 2020 – DIRECTIONS HEARING**

We have given consideration as to whether the leave to appear to Mr Bailey at the last directions hearing on 25 August 2020 should be revoked. We did so because Mr Bailey was given leave to lodge an appeal against the suspension of Mr Finn to be heard on 10 September 2020 but instead lodged an incompetent appeal seeking to strike out the charges in the matter. Mr Bailey has now withdrawn the incompetent appeal and has requested a copy of the transcript of the last directions hearing to assist him and Mr Finn to decide whether his representation of Mr Finn is in Mr Finn’s best interests. The Registrar has informed the Tribunal that the transcript can be provided to all interested persons by the end of the week. Mr Bailey has also undertaken to lodge a competent appeal tomorrow against the suspension tomorrow.

Bearing in mind that the Tribunal will continue to monitor the actions of Mr Bailey to satisfy itself that he is acting in the best interests of Mr Finn we defer any consideration of reversing Mr Bailey’s leave to appear for the time being. We will give notice to the parties if we contemplate revoking that leave in the future. Accordingly, Mr Bailey remains on the record as the representative for Mr Finn for the time being and unless that privilege is revoked in the future after a preliminary hearing.

When lodged, the appeal against Mr Finn’s suspension when lodged will be listed for 10 September 2020. Further, we note that Mr Finn consents to the following orders sought by Mr Considine and which we now make.

* 1. That except with the leave of the VRT the grant of leave to Mr Bailey to continue to act for Mr Finn is conditional on Mr Bailey limiting all correspondence in the proceeding to GRV legal representatives and the VRT.
	2. That Mr Bailey otherwise reframe from sending correspondence regarding the proceeding to any third party or any other GRV officers or Board members.

Mark Howard
Registrar, Victorian Racing Tribunal