

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

TRIBUNAL: JUDGE J. C. MCGUIRE

ASSESSOR: DR P. KNIGHT

APPEAL OF MR FRANK DAROS

DECISION

The stewards conducted an inquiry into the positive finding of nandrolone in the post-race urine sample taken from the greyhound In Hindsight at Bulli on 23 July 2008, when trained by Mr F. Daros. Mr Daros was charged with a breach of Rule 83(2)(a) of the Rules of Greyhound Racing which 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.*

The particulars of the charge notified to Mr Daros were:

That you did on 23.7.08 present the greyhound In Hindsight for an event being Race (3) Linmick Distributors Mixed final held at Bulli other than free of prohibited drugs in that the race day urine sample taken from the said greyhound has returned on confirmatory analysis positive to Nandrolone.

The Tribunal is considering a severity appeal following a finding of guilt and a disqualification for five months from October 2008.

Mr G. Walters appeared for the Appellant and Mr T. Orlizki appeared for the Authority.

The evidence before this Tribunal is to the following effect on 23 July 2008 the Appellant presented his dog In Hindsight at a meeting at Bulli. The dog was the winner of race 3. The urine sample from a post-race swabbing was delivered to the Australian Racing Forensic Laboratory, and that laboratory certified the presence of nandrolone. The urine sample was delivered to the Racing Science Centre, Queensland, which after confirmatory analysis also certified the presence of nandrolone.

In the course of the stewards inquiry the Appellant stated that he had taken In Hindsight to his veterinarian, Dr E. J. Humphries, who injected the dog. Dr Humphries provided to the inquiry a letter in the following terms:

"The above greyhound was treated with Boldenone hormone on 2 July 2008. I informed Mr Daros at the time that this may swab for three to four weeks after the administration. I also said there was some discussion about a phase-in period, but there was nothing official in this regard. I said I was uncertain at this time what the actual rules were going to be as the issue was somewhat clouded in uncertainty. I understand the dog was raced and returned positive to the drug. This highlights the difficulties for trainers and veterinarians predicting with certainty when drug excretion will be complete given the variation between individual animals in regard to drug excretion times. Mr Daros, I know, would not have raced the dog had he known a drug residue was likely to be present. And indeed, in the twenty years I have known Mr Daros, I have found him an honest and reliable person who does his best to comply with the rules of greyhound racing. I regret my part in his current misfortune."

Although Dr Humphries refers to the greyhound being treated with Boldenone, the substance used in the treatment was in fact nandrolone.

The evidence before the stewards inquiry disclosed that the Appellant had nominated the greyhound (which finished second) on 16 July 2008, some two weeks after the injection by Dr Humphries. The dog subsequently started on 23 July 2008, despite the advice given to the Appellant by Dr Humphries. In the course of the inquiry Mr Daros stated on more than one occasion that his actions constituted a genuine mistake. He pleaded guilty, and was subject to the penalty as stated herein.

It is to be noted that the drug was not prohibited until 1 July 2008. The Appellant had used it frequently prior to that time. There was no evidence to the effect that this was a performance-enhancing drug, albeit that it no doubt aided the presentation of the dog and rendered it more capable of doing its best.

In the course of his submissions on penalty, Mr Walters told this Tribunal that the Appellant is presently aged 70 years, that he resides alone on a property which he owns, that he migrated to Australia in 1962, and that he had worked full time until he retired in 2003. He was engaged as a concreter, either as an employee or self-employed. A trainer's licence was granted him in about 1969, and subsequently he was granted an owner's licence. His first winner was produced in 1972. Accordingly, he has been licensed continuously for some 38 years. His record displays but minor infractions, and he could be fairly described as a first offender when it comes to more serious transgressions.

This Tribunal is prepared to assume that in the course of his 38 years of training the Appellant's dogs would have been swabbed on many occasions, and there is no suggestion from his record of any misconduct relating to drug offences.

In addition to training on his own behalf, he trains for owners and normally has some 12 dogs in work. He breeds litters and presumably sells some of them.

It was submitted that Mr Daros gains great satisfaction from his participation in the industry. The Tribunal accepts that he has been of benefit of a Mr Farragher, for whom he trains, a person significantly disabled. The Tribunal has no reason to question the submission that Mr Daros is ashamed and embarrassed by this positive finding to such an extent that he did not nominate dogs prior to being spoken to by the stewards and prior to his disqualification. At all relevant times, he indicated that he would plead guilty, and the Tribunal is prepared to accept that he is remorseful and contrite.

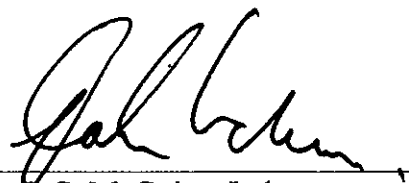
Just as a bad record would disqualify him from favourable consideration, the Tribunal considers that Mr Daros is entitled to call in aid his good record over so many years. However, this Tribunal must have regard to the question of general deterrence. It is vital to the welfare of the industry that it remain drug free. Other owners, trainers, punters and the public at large are entitled to see that there is a level playing field, and that dogs and their connections are not advantaged by the aid of chemicals regardless of whether they enhance or inhibit performance. If the credibility of the industry is not preserved by the imposition of salutary penalties on those who breach the drug-free rules, then there is open slather; success would depend in large part on who is the most successful in employing the most efficacious drugs.

Having regard to the various subjective matters standing to the credit of Mr Daros, and having regard to the fact that the drug was administered but one day post the rule coming into force, the Tribunal considers that the penalty imposed by the stewards was excessive and substitutes a penalty of two months disqualification, which is to date from 20 October 2008.

The Tribunal believes that it is incumbent on the Authority to effectively bring the new rules to the attention of trainers, many of whom are unsophisticated. Seemingly, the use of the offending drug was widespread and entrenched for many years. Of course, the Tribunal will examine each case on its own merits and consider the circumstances pertinent to it. However, the Tribunal may view more seriously offences involving the use of the prohibited substance in the future. The decisions of the Tribunal in this matter and in the matter of Passfield are not to be taken as precedents which will necessarily influence future decisions. The decisions in Daros and in Passfield were arrived at on facts peculiar to those appeals.

The appeal deposit is forfeited.

27 November 2008



J. C. McGuire, Judge