

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

TRIBUNAL: JUDGE J. C. MCGUIRE

ASSESSOR: DR M. KIDD

APPEAL OF MR DAVID RIGHETTI

DECISION

The Appellant appeals against a finding of guilt and the penalty imposed by the stewards consequent upon an inquiry conducted on 7 and 21 April 2009 into the presence of a drug found in the greyhound Thump Boxer, on 20 December 2008.

He was charged with a breach of Rule 83(2)(a), which provides:

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 are as follows:

That you did on 20th December, 2008 present the greyhound 'THUMP BOXER' for an event being Race 4 Castlewood Kitchens Staff Trophy held at Wentworth Park 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 d-AMPHETAMINE (Rule 83(2)(a) Rules of Greyhound Racing).

Despite his not guilty plea, the stewards found the charge proved and disqualified the Appellant for eighteen months from 21 April 2009. He successfully applied for a stay of proceedings.

Thump Boxer won the fourth race at Wentworth Park on 20 December 2008. However, following the positive drug test it was disqualified and the placings were amended accordingly.

This Tribunal has before it the transcript of the stewards inquiry and the exhibits considered by the stewards.

The Appellant, the registered trainer of Thump Boxer, was present when a urine sample was taken from the dog. He agreed that he had no objection with regard to the manner of taking the sample.

The stewards relied upon a canine screening analysis report of 28 January 2009, which disclosed the presence of d-amphetamine in the subject urine sample, and a confirmatory analysis, which were exhibits before the stewards inquiry and this Tribunal.

The correctness of the analyses, that the drug was a stimulant and a drug within the meaning of the rules, was conceded.

The Appellant made the point to the stewards that at the presentation following the race a number of people who had been drinking and who claimed to be part owners of the dog touched and patted it and shook the Appellant's hand. He in turn touched the dog's mouth. These people claiming to be part owners were not known to the Appellant. One of these persons held the dog's muzzle, which had been removed for the purpose of photographs. After the presentation, these men shook his hand again. The muzzle was returned to him and he replaced it on the dog.

It was the Appellant's contention that the dog could not have received the drug before he presented it to race. He maintained that he had not introduced the drug to the dog. Prior to the race it had been secured in his kennels, which could not be accessed and where the dog could not be touched.

The stewards and this Tribunal viewed a video depiction of the presentation. It clearly demonstrated that some six men shook the Appellant's hand. One patted the dog on or near its head. Another held its muzzle whilst photographs were taken. The actions and demeanour of these men were consistent with them having consumed a significant quantity of alcohol. For whatever reason, they were clearly excited or excitable.

The Appellant is seen to handle the dog, touching it very close to its mouth. Clearly, it could have licked that area. On the video, it is shown licking its lips. He maintained that he had kissed the dog by further touching it near the mouth. Yet again it licked its lips.

Max Reading, a stipendiary steward, told of accompanying the Appellant and the dog to the presentation dais following the race. He observed a couple of people pat the dog on the back. It was his practice to record in his notebook if the dog was touched on the muzzle by strangers. He did not believe that this had occurred. After the presentation the Appellant and the dog were escorted back to the wash bay area where it received a drink. It was securely locked away and then swabbed.

The video evidence and the observations of Mr Reading exclude as a possible source of contamination any contact between the part owners or any other strangers and the dog in that nobody apart from the Appellant touched it in the vicinity of the mouth.

Aware that the Appellant maintained that the dog had received the drug by means of transfer from the Appellant's hands to the dog, the stewards called as a witness a Mr Andrew Vadasz, Deputy Chief Analyst, Australian Racing Forensic Laboratory. He was interviewed by phone in the stewards inquiry and he gave evidence before the Tribunal. The question was put to him by the stewards as to the possibility of a contamination from the Appellant's hand touching someone when they had had amphetamines and passing them on to the dog, which ingested the drug.

Mr Vadasz recounted an experiment involving the dusting of dollar bills with cocaine dust and presumably somebody who handled such dollar bills touching another person's hands, yet the levels reached in testing of urine were extremely low. He ventured the opinion that Mr Righetti would have felt dust and that he could not have failed to notice it.

However, in the course of his evidence before the Tribunal Mr Vadasz stated that he had no knowledge of any experiments which could demonstrate the possibility or otherwise of cocaine or amphetamine being transmitted manually to a dog.

There was no evidence as to the similarity, if there be any, between the tactile sensation of manual exposure to cocaine or amphetamine.

He agreed that the experiment to which he referred, was not relevant to the question of the transmission of amphetamine manually to a dog.

As to his opinion that he would expect the Appellant to feel powder on his hand, Mr Vadasz agreed that he simply did not know if this would be the case.

Dr Lewis, toxicologist, expressed the opinion, in effect, that the Appellant, a highly experienced trainer, would not have administered amphetamine, a drug so easily detected, knowing the dire consequences of detection. This was not proffered as an expert opinion. However, it does have a common sense attraction to the Tribunal. The amount present was extremely small, 100 ng/mL.

The Tribunal does not believe that such a quantity could have any stimulatory effect and accordingly there seems no obvious reason for it to have been administered pre-race.

Of course, it is not for the stewards to proffer some reason for the presence of a drug. It is not for them to establish that a drug might have been administered for some nefarious purpose. If the dog was presented with the drug, that is sufficient to constitute a breach of the rule.

Dr Lewis opined that the drug could have been absorbed if someone had a small amount of it on his hands and allowed the dog's mouth to have come into contact with them. The metabolite could have been produced in one hour and forty minutes if ingested from the Appellant's hand.

Laudatory references expressing extreme disbelief of the Appellant's guilt and strong opinions supportive of his good character, honesty, ethical standards, integrity and professionalism were tendered before the stewards. He was described as dedicated, diligent and hard-working. One of the authors, Adam Dobbin, NCA General Manager, found the allegation completely out of character given the principles the Appellant applied to his training. Through his dealings with the Appellant, he always found him to be extremely meticulous when it comes to ensuring that he abides by all the governing laws in greyhound racing. He regarded the Appellant as an upstanding individual and said that greyhound racing was fortunate to have him as a participant. Similar views were expressed by the General Manager of the Richmond Race Club and others.

Evidence of the Appellant's good character was referred to by the stewards in passing. However, it does not appear to have been given the weight it was entitled to. It is a factor that he is entitled to have taken into account when his credit and veracity are being

assessed, and in determining the quality of his denials and as to whether he is guilty of a breach of the rule.

The Appellant has a lengthy history of training greyhounds in Queensland and New South Wales. There were two offences in New South Wales. However, they have no real relevance. He has a substantial previous history of clear swabs.

The Tribunal finds that there is a reasonable possibility that the drug was not within the dog when it was presented and that it could have been ingested in the manner claimed by the Appellant.

Accordingly, the appeal is upheld and the disqualification of the Appellant is quashed.

The disqualification of the dog is set aside and the original placings are to be restored.

The appeal deposit is to be refunded.

3 June 2009

J. C. McGuire, Judge