

## STEWARDS DECISION

### OFFICE OF RACING INTEGRITY

and

### MR ALLAN MCDONOUGH

<b>Date of hearing:</b>	Monday 26 <sup>th</sup> June 2023
<b>Stewards Panel:</b>	Neil Finnigan (Chair); Ross Neal
<b>Present:</b>	Mr Allan McDonough
<b>Rule:</b>	Australian Harness Racing Rules
<b>Charge:</b>	That Mr Alan McDonough as the trainer of DREAM MAZE presented that mare for the purposes of participating in Race 4 at the Launceston Pacing Club meeting on Saturday 8 <sup>th</sup> April 2023 when a post-race urine sample taken from the mare revealed the presence of the prohibited substance ARSENIC above the permitted threshold.
<b>Plea:</b>	Guilty
<b>Penalty:</b>	\$2,000 fine with \$1,000 fully suspended for a period of 12 months pending another breach under Part 12 of the Australian Harness Racing Rules.

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#### 1. Background

- (a) The Respondent, Mr McDonough is a licensed harness trainer based at Cardigan, Victoria.
- (b) Mr McDonough is the trainer of the registered mare DREAM MAZE.
- (c) DREAM MAZE is a 5YO mare owned by Mr McDonough, in equal partnership with Ms HR Mononen, Mr AB Swire and Mr AI Darcy.
- (d) Whilst in Tasmania, DREAM MAZE was stabled at the Bill Dornauf stable complex in Perth.

- (e) DREAM MAZE was correctly entered, and presented, for Race 4, the Allen Williams Memorial Maiden Final at the Launceston Pacing Club meeting on Saturday 8<sup>th</sup> April 2023.
- (f) A routine post-race urine sample was taken from DREAM MAZE. Ms Henna Mononen signed as the witness of the swabbing procedure, confirming her presence throughout the procedure. The sampling process was not contested.
- (g) The sample collected from DREAM MAZE was allocated the unique number V796842.
- (h) DREAM MAZE was placed first in the event.
- (i) On Thursday 4<sup>th</sup> May 2023 Racing Analytical Services Limited (RASL) issued a Certificate of Analysis reporting that ARSENIC had been detected in sample V796842. The control sample was clear.
- (j) RASL also advised that the reserve portion of the sample had been forwarded to the Racing Chemistry Laboratory (RCL) in Western Australia for referee analysis.
- (k) Mr McDonough was notified via phone with a follow up email of the discrepancy and through this correspondence he indicated he would prefer the matter to be dealt with via further correspondence, which Stewards accepted.
- (l) On 1<sup>st</sup> June 2023 RASL advised that RCL had confirmed the presence of ARSENIC in the reserve portion of sample V796842.
- (m) On 19<sup>th</sup> June 2023 Mr Allan McDonough was formally charged with a breach of Australian Harness Racing Rule 190(1), with the particulars being that he presented DREAM MAZE to race on Saturday 8<sup>th</sup> April 2023 at a meeting conducted by the Launceston Pacing Club when not free of a prohibited substance, namely ARSENIC.
- (n) Mr McDonough pleaded guilty to the charge.

## **2. Penalty Approach**

2.1 Turning to the matter of penalty the Stewards are cognisant of the following Sentencing Principles –

- (i) That penalties are designed to punish the offender for his/her wrongdoing. They are not meant to be retributive in the sense that the punishment is disproportionate to the offence, but the offender must be met with a punishment.

- (ii) In a harness racing context, it is very important that a penalty has the effect of deterring others from committing similar offences through the consideration of both general and specific deterrence.
- (iii) Penalties imposed upon those offending the prohibited substance rules should reflect the industry's disapproval of prohibited substances being detected in those performing duties which put at risk, both the health and wellbeing of other licence holders and standardbreds
- (iv) In determining what, if any penalty, that is to be imposed, the Stewards endeavour to reach a proportionate balance between: the public interest; the interests of the offender; the interests of the industry as a whole; the seriousness of the offending; and any aggravating/mitigating factors.

### **3. Respondents Penalty Submissions**

- 3.1 Mr McDonough submitted that he had stabled DREAM MAZE at the property of Bill Dornauf whilst in Tasmania where treated posts form part of his stabling structure.
- 3.2 Mr McDonough submitted that in future he will be inquiring into stabling/fencing construction before travelling.

### **4. Penalty Discussion:**

- 4.1 In approaching the matter of penalty, if any, to be imposed, the Panel have reflected on previous penalties imposed for breaches of the prohibited substance rules. These being both Tasmanian and Interstate decisions.
- 4.2 We are guided by the Appeals Tribunal decision of *ORI vs. Poke* (Thoroughbred Racing) where on appeal the penalty imposed by the Tribunal was a \$2,000 fine with \$1,000 suspended for 12 months – pending no further breaches of the prohibited substance rules. The penalty arrived at by the Tribunal being applied consistently in Tasmanian Arsenic cases since this point.
- 4.3 Having regard to all circumstances we believe that there is no reason to depart from the aforementioned determination in this matter. This being a fine of \$2,000 with \$1,000 suspended for 12-months.
- 4.4 In this case there is a reasonable degree of probability that the adverse result came about because of stabling structure where DREAM MAZE was housed whilst in Tasmania.
- 4.5 However, through his own indication Mr McDonough has failed to ascertain whether the stabling structure presented a risk that could give rise to an adverse sample result, and to this end we find Mr McDonough negligent, in

failing to assess the risk with the use of the stables and therefore the risk of potential breach of the presentation rule in harness racing.

## **5. Factors in Mitigation**

5.1 In determining the appropriate penalty, the Stewards recognise the following factors in mitigation, and which are relevant to penalty discussions. These being -

- (a) Mr McDonough has been fully cooperative throughout the ORI investigation.
- (b) Mr McDonough's admission of the breach.
- (c) Mr McDonough's previously clear record (although mindful of an historical breach overturned on appeal).
- (d) Mr McDonough's personal circumstances and the submissions made by him with respect to the measures adopted to reduce any future risk.

## **6. Outcome**

6.1 Having regards to all circumstances the Stewards make the following orders.

- (i) Mr McDonough be fine the sum of \$2,000 with \$1,000 fully suspended for a period of 12 months, pending another breach under Part 12 of the Australian Harness Racing Rules.

## **7. Disqualification Of DREAM MAZE**

7.1 Pursuant to AHR Rule 195, DREAM MAZE is disqualified from Race 4 at the Launceston Pacing Club meeting on Saturday 8<sup>th</sup> April 2023 with the placing to be adjusted accordingly and to reflect the disqualification of DREAM MAZE.

**Decision Date:** 26<sup>th</sup> June 2023