

GREYHOUND WELFARE & INTEGRITY COMMISSION

DISCIPLINARY ACTION DECISION

- Date of decision:** 29 June 2020
- Decision-makers:** Matthew Tutt, Director Legal Services, Geoffrey E Sage, Steward & Sarah McClure, Senior Legal Officer
- Name of relevant person:** Mr Leonardus Vanderburg
- Track:** N/A – Non-meeting
- Date:** 8 January 2019
- Rule no.:** Rules 86B(1)(a), 86B(1)(b), 86A & 86B(1)(b)
- Charge(s):**
- (1)-(3) On 8 January 2019, an item comprised of tanned animal hide (an old coat), was found on Mr Vanderburg’s registered property, which later forensic examination determined despite the preparation / tanning process to be of animal origin and not consistent with synthetic fibres, with the presence of the DNA of domestic dog (saliva).
- (4) On 8 January 2019, a looped and knotted rope tied to an arm of a metal rail in a shed with fine hairs attached was found on Mr Vanderburg’s registered property, which later forensic examination of sampled fine hairs disclosed the DNA of European rabbit / domestic rabbit and expert evidence of a veterinary pathologist was that the presence of the hairs on the rope was very likely from a rabbit, or part thereof, being within the looped and knotted rope.
- Disciplinary action taken:** Disqualification periods served concurrently (commenced 30 June 2020 (R95(5))); period served under interim suspension taken into account as time served
- Charge 1: 20 months disqualification with 12 months suspended for 2 years (conditionally)
- Charge 2: 10 months disqualification with 6 months suspended for 2 years (conditionally)
- Charge 3: Not impose any further penalty having regard to the penalties issued under charges 1 and 2
- Charge 4: 4 years disqualification with 3 years suspended for 2 years (conditionally)

DECISION:

The Commission has finalised its investigation into allegations against Mr Leonardus Vanderburg regarding items found on his registered property on 8 January 2019:

1. Mr Vanderburg was, at all material times, a registered greyhound trainer and breeder.
2. On 8 January 2019, Commission Inspectors attended the registered kennel address of Mr Vanderburg to conduct an inspection.
3. During that inspection, the Inspectors had surrendered to them:
 - A 750 x 365 x 125 mm piece of red to tan-coloured fur and skin ("**first item**"), with an aqua-coloured rope and a fine orange attached, found hanging on a fence on the property – a squeaky toy in the shape of a chicken was encased in the hide and removed by the Inspectors before departing the property; and
 - A yellow and blue rope which was knotted at one end in a loop threaded as a self-tightening loop, tied to an arm of a metal rail and found inside a shed alongside a starting box ("**second item**"). There were fine hairs found attached to the rope,
(collectively "**items**").
4. The items were analysed by a veterinary pathologist, who concluded:
 - The first item was comprised real animal hide, mammalian skin and fur; and
 - The second item had attached to it real animal hairs.
5. An analysis for species was then conducted by the Australian Centre for Wildlife Genomics and identified:
 - DNA of domestic dog (saliva) on the first item; and
 - European rabbit / domestic rabbit on the samples extracted from the second item.

The species of the first item could not be identified and the Australian Centre for Wildlife Genomics found that this was likely due to the processing and/or treatments that tanned hides undergo during manufacture.
6. Having considered all evidence, including Mr Vanderburg's submissions in reply, pending the finalisation of the Commission's investigation, on 29 March 2019 the Commission interim suspended Mr Vanderburg's trainer and breeder registrations pursuant to Rule 92(5)(c) of the Commission's Greyhound Racing Rules ("**Rules**").
7. Mr Vanderburg appealed GWIC's interim decision and on 22 May 2019, the Racing Appeals Tribunal upheld the appeal and revoked the interim suspension on Mr Vanderburg's trainer and breeder registrations.

Substantive charges

8. After considering the evidence, on 3 June 2019 Mr Vanderburg was charged with a breach of Rules 86B(1)(a), 86B(1)(b), 86A & 86B(1)(b) of the Rules, which read:

R86B:

(1) A person who, in the opinion of the Stewards or Controlling Body-

(a) uses in connection with greyhound training, education or preparation to race, or racing, any live animal, animal carcass or any part of an animal whether as bait, quarry or lure, or to entice, excite or encourage a greyhound to pursue it or otherwise; or

(b) attempts to possess, or has possession of, or brings onto, any grounds, premises or within the boundaries of any property where greyhounds are, or are to be trained, kept or raced, any live animal, animal carcass or any part of an animal for the purpose of being, or which might reasonably be capable of being, or likely to be, used as bait, quarry or lure to entice or excite or encourage a greyhound to pursue it; or

...

R86A:

A person shall only use or have in their possession at any place where greyhounds are, or are to be kept, trained or educated or prepared to race, or racing, a lure that is approved by the Controlling Body.

LR86A:

(1) For Rule 86A, GRNSW approves a lure that:

(a) is made up of synthetic materials only; and

(b) may contain an audible device.

(2) For the purposes of this Rule, "synthetic materials" means non-animal derived materials

9. On 22 November 2019, the matter proceeded to hearing.
10. Mr Vanderburg appeared before the Commission and was legally represented. Mr Vanderburg entered a plea of guilty to charge 3 (R86A) and pleas of not guilty to charges 1, 2 and 4 (R86B(1)(a), R86B(1)(b) and R86B(1)(b)). Oral evidence was provided by a Commission Inspector involved in the inspection of Mr Vanderburg's kennels, the Commission's Chief Veterinary Officer, a veterinary pathologist, a certified wildlife forensic scientist, a private veterinarian and Mr Vanderburg.
11. The matter was adjourned for the Commission to receive written submissions on behalf of Mr Vanderburg in relation to the charges and to propose any penalties.
12. On 24 March 2020, after considering all available evidence, the Commission found charge 3 proven and Mr Vanderburg formally guilty of charges 1, 2 and 4. The Commission found Mr Vanderburg guilty of charges 1, 2 and 4 on the following basis:
- Each charge was found proven on the balance of probabilities;
 - Regarding charge 2, the first item, comprised of part of an animal (although manufactured into clothing), was possessed by Mr Vanderburg where

greyhounds were trained and kept and the item satisfies the definition of something that could reasonably be capable of being used as a lure;

- Regarding charge 1 also involving the first item, in addition to the above, admissions were made by Mr Vanderburg as to use in training of greyhounds and was analysed by the veterinary pathologist to be saliva stained where the fur was moderately stuck together by a transparent fluid, which DNA analysis determined to be the DNA of domestic dog;
- Regarding charge 4, the second item was found in situ on the arm of a metal rail in a knotted and looped configuration with fine hairs attached (with DNA analysis determining to be rabbit), with the expert evidence before the Commission being that the most probable explanation for the selective presence of the hairs attached to the second item, particularly on the inside of the knot of the item, is friction between the second item and animal (rabbit) fur, causing exfoliation of the hairs onto the item, rather than environmental exposure.

13. The provisions of Rule 86B require a minimum penalty of disqualification for a period of not less than 10 years unless there is a finding that special circumstances exist, whereupon a penalty less than the minimum can be imposed. Upon finding the charges proven, the Commission allowed a further opportunity for submissions to be provided on Mr Vanderburg's behalf.

Special circumstances

14. On 6 May 2020, the Commission, after considering further submissions provided on Mr Vanderburg's behalf in relation to special circumstances, found the existence of special circumstances so to negate the mandatory 10-year disqualification period on the basis of a combination of:

- The objective seriousness of the conduct in relation to charges 1, 2 and 3 are considered to be on the lower end of the spectrum of the offending behaviour captured by Rule 86B(1);
- The objective seriousness of the conduct in relation to charge 4 is considered in the mid-range of the spectrum of the offending behaviour captured by Rule 86B(1);
- The length of Mr Vanderburg's registration history being approximately 42 years and in that time Mr Vanderburg's disciplinary history does not include any like matters;
- Mr Vanderburg's age and health, the adverse effect upon Mr Vanderburg of the recent loss of family members and the effects of the recent loss of family members and the disciplinary proceedings upon his wife to which he is sensitive to and affected by but are not further repeated here.

15. The Commission, after considering further submissions provided on behalf of Mr Vanderburg, took the following disciplinary action against Mr Vanderburg:

Charge 1 (R86B(1)(a)): To disqualify Mr Vanderburg for a period of 20 months with 12 months wholly suspended for a period of 2

years on the condition that he does not breach Rule 86B in that 2-year period;

Charge 2 (R86B(1)(b)): To disqualify Mr Vanderburg for a period of 10 months with 6 months wholly suspended for a period of 2 years on the condition that he does not breach Rule 86B in that 2-year period;

Charge 3 (R86A): To not impose any further penalty having regard to the other penalties issued under charges 1 and 2;

Charge 4 (R86B(1)(b)): To disqualify Mr Vanderburg for a period of 4 years with 3 years wholly suspended for a period of 2 years on the condition he does not breach Rule 86B in that 2-year period,

with:

- The periods of suspension to be served concurrently;
- The periods of disqualification to commence on 30 June 2020; and
- 54 days served under an interim suspension (29 March 2019 to 22 May 2019) taken into account as time served, causing the periods of disqualification to expire on 7 May 2021.

16. In taking this disciplinary action, the Commission considered all evidence, including:

- The factors considered in the finding of special circumstances;
- Mr Vanderburg's admission of charge 3 at the earliest opportunity;
- Mr Vanderburg has been a registered participant in the greyhound racing industry for a period of approximately 42 years, with no like matters in his disciplinary history;
- Mr Vanderburg's cooperation with the investigation and inquiry conducted by the Commission;
- The period served under an interim suspension from 29 March 2019 to 22 May 2019, being 54 days, has been taken into account as time served;
- Mr Vanderburg's submissions in mitigation of penalty including in relation to his exceptional contribution to the industry over a long period of time and his good character as evidenced by a number of character references;
- NSW greyhound racing precedents, including recent precedents imposed by the Commission.

.....End.....