

# RACING APPEALS TRIBUNAL

## QUEENSLAND

### NOTICE OF DECISION

**APPEAL NO:** RG005-08

**DATE:** 27 November 2008

**APPELLANT:** Mr Steven James Smith

**RESPONDENT:** Greyhound Racing Authority

**APPEAL FROM:** Appeal against the decision of the Stewards to impose a penalty of 6 months disqualification and a fine of \$250.00 for a breach of Rule 83(2)(a)(d).

**BREACH OF RULE:** Rule 83(2)(a)(d)

**DECISION:** Appeal dismissed.

**APPEARANCES:** Mr Paul McIlveen, with the approval of the Tribunal appeared on behalf of the Appellant.

Mr Danny Ryan, Chairman of Stewards appeared on behalf of the Respondent.

### REASONS FOR DECISION

Mr Brock Miller - Deputy Chairman

Mr Dennis Standfield - Member

This is an appeal by Mr Steven James Smith, holder of a Class 2 Trainer's Licence who is the Trainer and Owner of the greyhound Elite Sovereign. That greyhound returned a urine positive swab to paraxanthine, theobromine and theophylline after competing in Race 9 at the Brisbane Greyhound Racing Club Meeting on 26 August 2008. Paraxanthine, theobromine and theophylline are metabolites of caffeine. Caffeine is a central nervous system stimulant and as such it and its metabolites are defined as drugs under the Rules.

A Stewards Inquiry into the positive swab was held on 23 October 2008. At the Inquiry the Appellant was charged under Rule 83(2)(a)(d) which reads:

“Rule 82(2)

The owner, trainer or person in charge of a greyhound –

- (a) nominated to complete in an event;
- (b) shall present the greyhound free of any drug.”

The Appellant pleaded guilty to breach of the Rule.

At the Inquiry when asked for an explanation of why there was the presence of the drug in the greyhound, the Appellant submitted that he believed it was because his father Mr David Wallace Smith gave Elite Sovereign the chocolate product “Kit Kat” within 2 days of racing. Indeed at the Inquiry Mr Smith Snr. gave evidence to the Stewards that he had had a Kit Kat every night since he had given up smoking cigarettes and had given a small portion of one finger of Kit Kat to the greyhound over a period of time. Mr Smith Snr. further stated that his son was not aware the dog had been given chocolate products.

The Appellant and his father live together and Mr Smith Snr. is also involved in the industry being an Owner / Trainer and the holder of a Class 4 Licence.

At the Inquiry after hearing the evidence from the Appellant and Mr Smith Snr., the Stewards imposed a penalty for a breach of the Rule of 6 months disqualification and a fine of \$250.00.

It is clear from the transcript of the Stewards Inquiry that when considering the penalty the Stewards took into account two previous breaches of the Rule by the Appellant. The first of these breaches was in 2004 when there was also a positive swab for theobromine and theophylline and on that occasion the Appellant was fined \$350.00. The second occasion was in March 2008 when there was a positive swab for caffeine, theobromine and theophylline and the Appellant was suspended for 2 months and fined \$500.00.

The Appellant appeals to the Tribunal on the basis that the penalty is excessive stating, “...because other trainers are receiving a 2 month suspension and a \$500.00 fine for caffeine, theobromine, theophylline and paraxanthine...”.

At the hearing the Appellant was represented by Mr Paul McIlveen who submitted to the Tribunal that the drug theobromine is a minor drug and that the Racing Authority in New South Wales indicated by a press release dated 26 November 2008 that, “...they will no longer conduct enquiries into positive swabs to the drug Theobromine,

specifically where they appear to be the result of ingestion of a product containing chocolate or cocoa.”

Mr McIlveen also presented to the Tribunal extracts of Stewards Inquiries held on 12 November 2008 concerning the Trainer, Mr Barry Morris and the Trainer, Mr Jackson Morris. In Mr Barry Morris’ matter, the positive swab was for the drug theobromine and the Stewards imposed a fine of \$250.00. In Mr Jackson Morris’ matter, the drug was caffeine, theobromine, theophylline and paraxanthine for 2 separate offences. The Stewards imposed a penalty of 3 months suspension on both charges and a fine of \$750.00 with the suspension to be served concurrently.

In response to Mr McIlveen’s submissions, Mr Ryan stated that Mr Barry Morris’ matter was simply for the drug theobromine, and with Mr Jackson Morris, it was a case of a first offender.

Mr Ryan presented to the Tribunal a schedule of penalties imposed during the period 6 March 1995 to 12 September 2008 for caffeine and its metabolites. That schedule shows a varying range of penalties of either suspension or disqualification with periods ranging from 1 month to 2 years.

While the Appellant is not a professional Trainer, he has been in the industry for 18 years and at the time had 5 dogs racing. He is also involved in breeding. He is not currently unemployed and does part time car detailing work with his father. He also is involved in building a shed for his greyhounds at his property. He obviously enjoys his involvement in the industry and it is unfortunate that he finds himself in this position. However as the Tribunal has on numerous occasions stated, the industry and the public demand drug-free racing and there is a need the penalty be a deterrence, particularly when there is a repeat offender.

The Tribunal is of the view that when considering the schedule of penalties and the two previous breaches of the Rule by the Appellant, that a 6 month disqualification and \$250.00 fine is the appropriate penalty.

The Appeal is dismissed.

Mr Brock Miller .....  
Deputy Chairman

Mr Dennis Standfield .....  
Member