

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

**In the Matter of the Accusation
Against:**

**ANTONIO "A.C." AVILA
CHRB License No. 217546
Respondent**

Case No. SAC 14-0079

Case No. 13SA092

**DECISION AND ORDER AFTER
NON-ADOPTION OF PROPOSED DECISION**

This Matter was originally heard by Hearing Officer Daniel Q. Schiffer, on August 12, 2014, as Case No. 13SA092, at the Del Mar Race Track, Del Mar, California. On November 17, 2014, Hearing Officer Schiffer issued a Proposed Decision which suspended California Horse Racing Board (CHRB) Trainer's License issued to Respondent Antonio "A.C." Avila for thirty (30) days and fined him the sum of five thousand (\$5,000.00) dollars for violation of CHRB Rule No. 1887 (a) [Trainer to Insure Condition of Horse], for violation of CHRB Rule No. 1843 (a) and (d) [Medication, Drugs and Other Substances], CHRB Rule 1844 (e)(1) and (g) [Authorized Medication], Acepromazine in excess of the permitted level of 25 nanograms per milliliter (Class III) and CHRB Rule No. 1890 [Possession of Contraband].

By Notice of Decision Not to Adopt Proposed Decision and Order Directing Preparation of the Record, dated December 19, 2014, the California Horse Racing Board rejected the Proposed Decision and elected itself to decide the Matter on a review of the record, including the transcript, under the provisions of Government Code section 11517, subdivision (c)(2)(E). Respondent Avila was notified of the Decision to Non-adopt the Proposed Decision, via registered mail, on December 19, 2014. Thereafter, on January 13, 2015, Counsels for Complainant and Respondent were provided the administrative record, including the transcript of the hearing.

Counsel for both Complainant and Respondent submitted legal briefs to the California Horse Racing Board to consider prior to rendering the Decision and Order After Non-Adoption of Proposed Decision herein.

The California Horse Racing Board having reviewed the administrative record on the Matter and the legal briefs submitted by Counsel prior to the rendering of the Decision and Order After Non-Adoption of Proposed Decision herein, hereby issues its Decision in the Matter of the Accusation Against Antonio "A.C." Avila as follows:

The Proposed Decision is hereby adopted as to all factual findings as set forth in the November 17, 2014 Proposed Decision, subject to the following amendments:

Section 6, page 13, Paragraph 1 [Past drug positives], at page 14, is amended to include and incorporate by reference as though fully set forth herein California Horse Racing Board's Further Argument Before The Board Brief, Penalty Section, Paragraph B [Respondent Has A Long History of Equine Drug Violations (Rule 1843.3, subdivision (b)(1))] at page 7 therein, including Exhibit "A" reference therein and entered into evidence at the Hearing;

Section 6, page 13, Paragraph 2 [The potential of the drug to influence the horse's performance], at page 14, is amended to include and incorporate by reference as though fully set forth herein California Horse Racing Board's Further Argument Before The Board Brief, Penalty Section, Paragraph A [The Administration of Acepromazine On Race Day Had The Potential To Influence The Horse's Racing Performance (Rule 1843.3, subdivision (b)(2))] at pages 4 through 7 therein.

Section 6, page 13, Paragraph 3 [The legal availability of the drug], page 14, is amended to include and incorporate by reference as though fully set forth herein California Horse Racing Board's Further Argument Before The Board Brief, Penalty Section, Paragraph C [While Legally Available, The Acepromazine Found In the Barn Search Was Not Adequately Labeled In Accordance With Rule 1846 (Rule 843.3, subdivision (b)(3))] at page 7 therein.

Section 6, page 13, Paragraph 4 [Whether there is reason to believe that the responsible person knew of the administration of the drug or intentionally administered the drug], at page 14, is amended to include and incorporate by reference as though fully set forth herein California Horse Racing Board's Further Argument Before The Board Brief, Penalty Section, Paragraph D [Mr. Avila Intentionally Administered Acepromazine to Masochistic on March 15, 2014 (Rule 1843.3, subdivision (b)(4))] at page 7 through 9 therein.

Section 6, page 13, Paragraph 5 [The steps taken by the trainer to safeguard the horse], at page 14, is amended to include and incorporate by reference as though fully set forth herein California Horse Racing Board's Further Argument Before The Board Brief, Penalty Section, Paragraph E [Mr. Avila Failed To Take Steps To Safeguard The Horse (Rule 1843.3, subdivision (b)(5))] at page 9 therein.

Section 6, page 13, Paragraph 11 [Whether the trainer was acting on the advice of the veterinarian], page 16, is amended to incorporate by reference as though fully set forth herein California Horse Racing Board's Further Argument Before The Board Brief, Penalty Section, Paragraph F [There Is No Evidence That

Any Veterinarian Prescribed This Medication To Masochistic Or That Mr. Avila Was Acting Under The Advice Of A Licensed Veterinarian (Rule 1843.3, subdivision (b)(11)] at page 10 therein.

The evidence admitted at the Hearing clearly demonstrates Respondent Avila entered Masochistic to race on March 15, 2014, **not** ready to run, **not** in physical condition to exert its best effort and **not** entered with the intention to win.

The attached Proposed Decision of Hearing Officer Schiffer is hereby modified to reflect that the California Horse Racing Board Trainer License issued to Respondent Antonio "A.C." Avila is suspended for sixty (60) days and fined the sum of ten thousand (\$10,000.00) dollars.

The actual days of suspension and payment of the fine are to be set by the Board of Stewards, Santa Anita Park, Arcadia, California.

IT IS SO ORDERED ON February 24, 2015.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman


By: Rick Baedeker
Executive Director

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Accusation Against,

ANTONIO "A.C." AVILA

Case No. 14SA 092

(PROPOSED) FINDS OF FACT
AND DECISION

COMES NOW, DANIEL Q. SCHIFFER, duly appointed Hearing Officer in the above described case, and submits his (Proposed) Findings of Fact and Decision as follows:

1. THE COMPLAINT

On or about April 4, 2014, the California Horse Racing Board ("CHRB") filed the following complaint against CHRB licensee ANTONIO "A.C." AVILA, Trainer, License # 217564-01/2016, as follows:

On March 15, 2014, the horse "Masochistic," trained by Antonio "A.C." Avila, was post-race tested after finishing fifth in the ninth race at Santa Anita Race Track. Official Sample #SA15465 was tested by U.C. Davis Laboratories and found to contain the class three substance Acepromazine (urine 973 ng/ml and blood 3.7 ug/ml). The acepromazine level exceeds the regulatory threshold permitted for urine of 25 ng/ml. There is no permitted level in blood. A.C. Avila's barn was also

in possession of medication bottles with blank veterinarian prescription labels attached or no prescription labels at all.

2. **THE HEARING**

On August 12, 2014, at Del Mar Race Track, Del Mar CA, an evidentiary hearing on the above accusation was held before the Hearing Officer. The hearing was transcribed by Michelle E. Derieg, CSR, Weinstein Court Reporters.

The CHRB was represented by Kamala D. Harris, Attorney General of California, Celine M. Cooper, Supervising Deputy Attorney General, Vanessa F. Martinez, Deputy Attorney General, appearing, and Mr. Avila was represented by Richard G. Anderson, Esq., Anderson LeBlanc, APLC.

A. **WITNESSES**

The following witnesses were duly sworn and provided testimony, summarized as follows:

ANTONIO "A.C." AVILA

Mr. Avila has been a horse trainer for 39 years. He maintains a public stable on the Southern California racing circuit. He has a barn foreman, Silvestri Castro, and, when Mr. Castro is not working, employee Erik Donis, acts as barn foreman. Mr. Donis was also the groom of a horse named "Masochistic." Both individuals have access to all medications kept in the feed room at the barn in or around a gray bin and are authorized by Mr. Avila to administer medications in his absence. Mr. Avila uses Dr. John Araujo for his veterinary consultations.

In or about August or September, 2013, Mr. Avila purchased Masochistic at Vessel's Stallion Farm on behalf of himself and a client (Los Pollos Herman's Racing Stable), as equal partners, after hearing about the horse's workouts at San Luis Rey Downs (training track).

Mr. Avila placed the horse in training and had very high expectations of his ability after the horse recorded a very fast workout over one-half mile. However during subsequent workouts (going five and six furlongs) the horse would go very fast early and then flatten out at the end. Mr. Avila found Masochistic to be a difficult horse to train; he ran too fast or too slow depending on his mood. He consulted with a veterinarian from Lexington KY, who opined that, based on a "Lambert" test conducted on the horse's heart and spleen, he should be a "late running sprinter." Therefore Mr. Avila instructed the riders, including jockey Omar Berrio who worked the horse, to hold him early and then finish well.

According to Mr. Avila he told the groom that he was going to enter the horse for Saturday. He believes that the groom understood that the horse was going to be entered on Saturday (to run the following Thursday). On Wednesday, prior to the race on Saturday, the groom wanted to trim the horse's mane so that the horse would look its best and to do so, because of the horse's temperament, it was necessary to tranquilize him. Therefore he administered two separate doses (two pills each) of Acepromazine, and, when the horse was still unruly, Dr. Araujo was called by the foreman and the veterinarian administered another dosage (by injection) of Acepromazine.

On March 15, 2014, at Santa Anita Race Track Masochistic ran in a maiden race. Jockey Omar Berrio rode him finishing fifth. On the morning of the race Mr. Avila had been at his barn from 4:30 a.m. until 9:30 or 10:00 a.m. and did not return before the race ran at 4:30 p.m. He described the race as "ugly-chopped, chopped"; well below his expectations.

After the race the other owner told Mr. Avila that he wanted to run a horse at Churchill Downs on Kentucky Derby day. Mr. Avila felt that the fields in Kentucky are "weak" so he entered and shipped the horse to run. The jockey of the Kentucky Derby favorite, Victor Espinoza, was engaged to ride him. In that race Masochistic "broke the gate" and went to the lead. There was a spill involving three horses behind him that, according to Mr. Avila, helped the horse

and he won by over 14 lengths. Mr. Avila bet \$1,000 on his horse; which returned a \$2,000 profit to him.

Thereafter on July 31, 2014, Masochistic raced and won at Del Mar Race Track.

Mr. Avila's testimony regarding the maintenance of his medication supplies was that it was Dr. Araujo's responsibility to label them. He seemed unaware that he had a responsibility to verify that they had been labelled or to secure the medications in their storage container. After their barn search CHRB investigators informed him of these duties but it took him until approximately ten days prior to the race meeting at Del Mar to effect changes. Later in his testimony he stated that he knew it was his responsibility but it was "difficult to keep the details in order."

PHILLIP MIYAZAKI

Mr. Miyazaki has been an investigator for the CHRB for the past six years. His duties include investigation of positive drug violations. He was assigned to investigate this matter and put together a package of information which he served on Mr. Avila. Mr. Miyazaki made an Investigative Report¹ to which he referred during his testimony.

On March 29, 2014, he conducted an unannounced barn search of Mr. Avila's stable. He was accompanied by CHRB personnel Rick Ameiva, Jim Hamilton, Luis Jaureguis and Dr. Rick Arthur. While at the barn he spoke to Avila employees Sylvestri Castro and Erik Donis. At later times he interviewed jockeys Berrio and Espinoza. He also interviewed Mr. Avila.

Mr. Miyazaki noted that Mr. Avila's medications were kept in or near a plastic container on a rolling cart. There was no lock on the container. There were containers of Acepromazine and other drugs, including "Dantrolin" and

¹ Exhibit "B"

“Bute,” both inside and outside the gray bin that appeared to serve as storage for the drugs. Mr. Miyazaki testified that when he returned to the barn two months later nothing had been remedied, i.e., the container was still unsecured and contained unlabelled medications.

When asked why Masochistic was tested Mr Miyazaki stated normally the first and second place horse are tested and that the Stewards can pick a third horse to be tested. The Stewards wanted to investigate the ride given to Masochistic by jockey Berrio because it appeared that the horse had been held back by him.

Mr. Miyazaki interviewed jockey Berrio. He stated that Mr. Avila instructed him not to “kill” the horse. He was told to hold the horse back at the start of the race and to wait until the end of the race to let him go.

DR. SCOTT DAVID STANLEY

Dr. Stanley testified as a percipient and expert witness on behalf of the CHRB. He has a PHD in Toxicology and has for the past seventeen years been a professor of Equine Analytical Chemistry and head of the (Kenneth L. Maddy) Equine Drug Laboratory at UC Davis. He has over twenty years experience in equine drug testing and is clearly a leader in his field.

The Equine Drug Laboratory is an accredited laboratory and has a contract with the CHRB to conduct testing of blood and urine samples drawn from equine athletes which participate in racing in the state of California.

Dr. Stanley reported that the the urine sample drawn from Masochistic after his March 15, 2014, race showed a concentration of 973 nanograms per millimeter of Acepromazine. When the blood was tested thereafter it showed 3.7 nanograms of Acepromazine per millimeter.

The maximum amount of Acepromazine permitted in post race urine tests is 25 nanograms per milliliter and there is none allowed in the blood. In Dr. Stanley's opinion the levels detected represented a very high concentration of the drug.

Acepromazine is a "rapid response" drug and, when injected, works on the horse's system within minutes and within thirty minutes when administered into the muscle. He would expect the drug to be eliminated from the horse's system within 48 hours of administration. Quite unusual was the fact that there was still Acepromazine in Masochistic's blood supply. In this case it is inconsistent with the findings that the drug was administered two to three days prior; rather the drug had to be administered within 24 hours prior to testing.

DR. JOHN ARAUJO

Dr. Araujo is a private veterinarian who has known and worked with Mr. Avila for the past 24 years. He is licensed as a veterinarian by the CHRB and provides veterinary services to horses at the racetracks.

Dr. Araujo was called to Mr. Avila's barn by Silvestre Castro because they were having trouble trimming the mane between the ears of Masochistic. He was not told that Acepromazine had previously been administered to the horse. He administered Dermosadan, a strong sedative, and Torbugesic, a strong pain reliever. In Dr. Araujo's opinion the combination of these two drugs made Masochistic easier to handle so that the groom was able to trim between his ears.

Acting as an expert witness on behalf of Mr. Avila, Dr. Araujo testified that Acepromazine is a "light" tranquilizer. In his opinion horses are able to train and function while on it. It has the effect of lowering blood pressure and expanding horse's lungs. It is often used to help load horses onto vans or to keep horses from hurting themselves and others. Dr. Araujo was not aware of any studies done on Acepromazine; although he did state that low dose levels would affect

bleeders and large doses could affect a horse's locomotion. Finally he opined that the metabolism of the drug occurs at different rates depending on the horse.

DR. RICK MITCHELL ARTHUR

Dr. Arthur, a Doctor of Veterinary Medicine, has for the past 8 years been the Equine Medical Director at the School of Veterinary Medicine at UC Davis. In his present role he participates in drug investigations and assists CHRB investigators. He has a long history of involvement with race horses beginning as a groom and later as a track veterinarian. He has qualified as an expert witness in court on at least six occasions.

In Dr. Arthur's opinion the amount of Acepromazine found in the post race test of Masochistic was "extraordinarily high." In his opinion the drug was administered to the horse on race day; probably within 10-4 hours prior to race time.

Dr. Arthur was not sure what effect the drug had on Masochistic's performance; although he believed the drug could affect performance. He felt that the environment could reduce the outward signs exhibited by the horse while under its influence. He did discuss the horse's appearance with the state veterinarians (charged with watching for unsoundness, etc., prior to and after the race) and they did not report anything unusual.

In Dr. Arthur's opinion the drugs administered by Dr. Araujo ("Dermosadan" and "Torbugesic") could not have not have resulted in the positive Acepromazine test; although he agreed these drugs were appropriate for the purpose that Dr. Araujo used them. He also stated that each horse's metabolism made minimal differences over the population and 95% of horses receiving 25 milligrams of Acepromazine will test below 10 nanograms per milliliter (urine) after 48 hours and that, therefore, the administration of 4 tablets of Acepromazine three days before the test could not result in the findings shown by Masochistic's urine test.

Dr. Arthur, who accompanied Mr. Miyazaki during the search of Mr. Avila's barn, concurred that Mr. Avila's failure to maintain a protocol for the drugs in the barn was in violation CHRB rules.

B. DOCUMENTARY EVIDENCE

The following exhibits were admitted into evidence:

- A. History of Drug Positives- This exhibit lists drug positives attributed to Mr. Avila while a CHRB Licensed trainer.
- B. Report of Investigation (4 pages)- This narrative was prepared by Mr. Miyazaki during the course of his investigation.
- C. Photograph of Gray Bin- This exhibit depicts the unlocked container in which certain of Mr. Avila's medications were found.
- D. Positive Test Notification- This document was provided to Mr. Avila by Mr. Miyazaki after the positive drug test was returned.
- E. Data Litigation Package- This letter documents the Laboratory findings.
- F. CONFIDENTIAL (4 pages)- These reports document the administration of medications to Masochistic by Dr. Araujo.

C. STIPULATION

The attorneys, on behalf of their respective clients, entered into a written Stipulation regarding certain facts in this case and is incorporated herein by this reference.

D. CLOSING

Both parties agreed to written closings pursuant to a schedule.

3. **FINDINGS OF FACT**

1. Antonio "A.C." Avila is a thoroughbred horse trainer licensed by the CHRB.

2. At all times mentioned herein Mr. Avila was the trainer and part owner of a thoroughbred racehorse named "Masochistic."

3. On or before March 11, 2014, through at least March 29, 2014, several prohibited drug substances, including Acepromazine, were unlabelled and were kept in or around an unsecured container in Mr. Avila's barn.

4. Mr. Avila's employees had unrestrained access to unlabelled prohibited drug substances stored in or around an unsecured container at his barn.

5. Mr. Avila's employees had apparent authority to administer prohibited drug substances to horses trained by Mr. Avila without consultation or approval by Mr. Avila.

6. Masochistic was reported to have had a history of being mean and to have injured two grooms. He was difficult to train depending on his moods.

7. On March 11, 2014, Mr. Avila's employees administered Acepromazine to Masochistic in order to trim his mane between his ears.

8. On March 11, 2014, Dr. Araujo administered "Dermosadan" and "Torbugesic" to Masochistic so that the groom of Masochistic could trim his mane.

9. Masochistic raced in the ninth race at Santa Anita Race Track on March 15, 2014, finishing in fifth place.

10. Masochistic was under the influence of the prohibited drug substance Acepromazine when he competed in that race.

11. The administration of the Acepromazine to Masochistic occurred between 10-4 hours prior to the race.

12. The Acepromazine was administered to Masochistic by employees of trainer Avila.

13. The testing of the urine and blood taken post race from Masochistic quantified the amount of Acepromazine in Masochistic's urine as 973 nanograms per milligram and 3.7 nanogram per milligram in its blood.

14. There was no dilution or other spoilage to either sample.

15. Mr. Avila was duly notified of the positive test results and declined his opportunity to have a split sample tested.

4. **CONCLUSIONS OF LAW**

1. California Horse Racing Law, codified at Business and Professions Code, section 19400, et. seq., and the Rules and Regulations promulgated there under in Title 4 of Rules & Regulations, govern this case.

2. Horse Racing Law provides for the conduct of parimutuel wagering on horse races and the protection of the public while in that pursuit. B & P C, section 19401(a).

3. The CHRB is vested with all powers necessary and proper to carry out the purposes of the Horse Racing Law. B & P C, section 19440(a)(1).

4. The CHRB is authorized to adopt regulations to establish policies, guidelines and penalties relating to the use of equine medications to preserve and enhance the integrity of horse racing. B & P C, section 19401(a)(1).

5, It shall be the intent of the rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs, medications and drug substances foreign to the horse. In this context: (a) No horse participating in a race shall carry in its body any drug substance or its metabolites or analogues, foreign to the horse except as hereinafter expressly provided....(d) A finding by an official chemist that a test sample taken from a horse contains a drug substance or its metabolites or analogues which has not been approved by the Board, or a finding of more than one approved non-steroidal, anti-inflammatory drug substance or a finding of a drug substance in excess of the limits established by the Board for its use shall be prima facie evidence that the trainer and his/her agents responsible for the care of the horse has/have been negligent in the care of the horse and is prima facie evidence that the drug substance has been administered to the horse. Rule 1843 (a) & (d).

6. Consistent with the intent of the rules, drug substances and medications authorized by the Board for use may be administered to safeguard the health of the horse entered to race provided that: (e) Official urine test samples may contain one of the following drug substances, their metabolites and analogs, in an amount that does not exceed the specified levels: (1) Acepromazine;... (g) Official blood test samples shall not contain any of the drug substances, or their metabolites or analogs listed in subsection (e)-(1)(12). Rule 1844(e)(1) & (g).

7. The trainer is the absolute insurer of and responsible for the condition of the horses entered in a race, regardless of the acts of third parties, except as otherwise provided in this article. If the chemical or other analysis of urine or blood test samples or other tests, prove positive showing the presence of any prohibited drug substance defined in Rule 1843.1 of this division, the trainer of the horse may be fined, his/her license suspended or revoked, or be ruled off. In addition, the owner of the horse, foreman in charge of the horse, groom, and any other person shown to have had the care or attendance of the horse, may be fined, his/her license suspended, revoked, or be ruled off. Rule 1887(a).

8. No person other than a veterinarian licensed by the Board, shall have in his possession at a facility under the jurisdiction of the Board any drug which is a narcotic, stimulant, or depressant, or any other substance or medication that has been prepared or packaged for injection by a hypodermic syringe or hypodermic needle, or any hypodermic syringe or hypodermic needle or similar instrument which may be used for injection. (b) No person other than a veterinarian licensed by the Board, shall have in his possession at a facility under the jurisdiction of the Board any veterinary treatment or any medicine, medication, or other substance recognized as a medication, which has not been prescribed in accordance with Rule 1840 of this division and labeled in accordance with Rule 1864 of this division. Rule 1890(a) & (b).

6. **DECISION**

Trainer Antonio "A.C." Avila was the trainer and part owner of the horse Masochistic which ran in the ninth race at Santa Anita Race Track on March 15, 2014, while having large quantities of the Class 3 prohibited drug Acepromazine in its system. Mr. Avila's failure to oversee his employees in their care of the horse and to have properly labelled or secured drugs resulted in its being introduced into the horse within 10-4 hours of its racing.

This is a case of first impression. Mr. Avila is a veteran trainer, with a long history of violations for prohibited drugs¹, who presented no plausible excuse for the drug being introduced into the horse's system. His explanation was not consistent with the facts stated by his own witness, veterinarian John Araujo. Dr. Araujo testified (and the records substantiate²) that, some 3 days prior to his being tested, he administered completely different drugs than were found to be present in Masochistic's blood and urine. The "Confidential," which is a log that was completed at or near the time that the acts it records occurred, is given

¹ Exhibit "A"

² Exhibit "F", page 2

greater evidentiary weight than the witness' recollection of the events after the fact. Therefore Mr. Avila's "explanation" is not believable.

Inside Mr. Avila's barn were unlabelled drugs, including the drug that was found in the horse upon testing³, on top of a feed cart and/or in an unsecured container; a condition that went un-remedied for a long period even after Mr. Avila was warned by CHRB investigators. Whether or not Mr. Avila administered the drug himself is immaterial. The fact is that the personnel inside his barn had unchecked use of this and other drugs. The spector of this horse, which had been described as "mean" and "moody" and had reportedly injured two handlers⁴, being led over to race caused Mr. Avila's employees to administer the tranquilizer for their own and the public's safety. Mr. Avila was not present to oversee the preparation of the horse; nor did he think it was his duty to monitor the use of this prohibited drug substance. These breaches caused a prohibited substance to be in the horse's system during a competitive race. He failed to oversee his employees or the horse he was responsible for and thus failed to fulfill his duties as a trainer. These breaches resulted in Masochistic running in a competitive race with very high quantities of Acepromazine in its system.

As such the CHRB has proven that Mr. Avila violated Rules 1843(a) & (d), 1844(e)(1) & (g), 1887 and 1890.

6. **PENALTY**

Acepromazine is considered to be a Class 3 prohibited drug substance. Rule 1843.2. Therefore Mr. Avila is subject to Category "B" Penalties stated in Rule 1843.3(d).

Rule 1843.3(b) requires that the following mitigating circumstances and aggravating factors be considered in determining a penalty:

³ Exhibit "B", page 1

⁴ Exhibit "B", page 2

1. Past drug positives

Mr. Avila has 29 prior violations dating back to when he became a licensee in 1990. During that period he has only had 7 years when he did not have at least one violation and he has had numerous years with three violations. This is an aggravating factor.

2. The potential of the drug to influence the horse's performance.

The experts all agree that the presence of vast quantities of Acepromazine in Masochistic definitely affected his performance. Jockey Berrio's statements to the CHRB investigator concerning how he rode the horse per instructions from trainer Avila are not convincing. Objectively, the Stewards, without knowledge that the horse was under the influence of a medication, saw a performance that led them to question the ride being given by jockey Berrio. It is far more plausible that the horse's performance was the result of the presence of the prohibited drug substance in his system. This is an aggravating factor.

3. The legal availability of the drug.

The drug appears to have been readily available. Its unrestrained use by employees of Mr. Avila represents an aggravating factor.

4. Whether there is reason to believe that the responsible person knew of the administration of the drug or intentionally administered the drug.

It was not proven whether or not Mr. Avila had knowledge that the substance was in the horse's system. Based on the conditions that existed Mr. Avila failed to take the necessary and required steps to insure that the drug would not be used on the horse prior to the race. It is an aggravating factor.

5. The steps taken by the trainer to safeguard the horse.

Mr. Avila took no steps to safeguard the horse. This is an aggravating factor.

6. The steps taken by the owner to safeguard the horse.

Mr. Avila was also the part owner. This is also an aggravating factor.

7. The probability of environmental contamination or inadvertent exposure or other factors.

There was no possibility that the amount of Acepromazine found in the post race test of Masochistic could have occurred by one of these causes. This is an aggravating factor.

8. The purse of the race.

The purse was typical for a race of this type and for a horse of this class. This is a neutral factor.

9. Whether the drug found was one that the horse was receiving pursuant to Rule 1842.

This factor was unproven. It was established that Dr. Araujo had prescribed the drug but, since there was no further labelling, it was unclear for what horse the drug was prescribed. This is an aggravating factor.

10. Whether there was a suspicious wagering pattern.

The CHRB attempted to establish that Mr. Avila used the drug in the horse's first race so that he could then run him on Kentucky Derby day. He and others then bet vast amounts of money and, because of the large amount of total handle, their bet went unnoticed. Mr. Avila admitted that he did make a large bet (\$1,000) on the horse. Aside from Mr. Avila's admission there was no evidence

presented of improper wagering. Without more a \$1,000 bet is not enough to warrant the conspiracy theory argued by the CHRB. This is a neutral factor.

11. Whether the trainer was acting on the advice of the veterinarian.

The testimony of Dr. Araujo was that Acepromazine was used in Mr. Avila's barn; especially for training in the mornings and possibly to load, etc., the horses. This and other drugs were unlabelled. The conclusion is that neither Mr. Avila nor Mr. Avila's employees understood the consequences of the unrestrained administration of the drug. This is a mitigating factor.

Discussion:

Except for Mr. Avila's long history of repeated drug violations, which significantly includes two prior "promazine" violations, there does not appear to be a clear intent by Mr. Avila to gain an unfair advantage over his competitors. In fact it is really questionable whether or not Mr. Avila had actual knowledge that the horse was led over to run with vast quantities of Acepromazine in its system.

Clearly Mr. Avila is ultimately responsible for the actions of his employees. In balance it was extremely fortunate that no one was injured as a result of the presence of this drug in this highly charged race horse. The public, who is to be protected by the CHRB, have been significantly harmed by the facts of this case. As such the aggravating factors far outweigh the mitigating circumstances.

In this context Rule 1887, the "Trainer Insurer" rule, is most applicable to the facts of this case. As has been extensively discussed above Mr. Avila failed to oversee his employees or to limit their access to prohibited drug substances, including the drug involved here. The facts of this case definitely warrant that a suspension and fine be levied against Mr. Avila.

Therefore it is ordered that Mr. Avila be fined the sum of \$5,000.00 and be suspended for a period of 30 days. The terms of payment and dates of the suspension shall be determined by the Stewards.

Respectfully Submitted,



DANIEL Q. SCHIFFER
Hearing Officer

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