

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

**In the Matter of the Complaint
Against:**

**OWNER SAUL R. ACOSTA
CHRB License No. 289746
Respondent**

Case No. SAC 14-0014

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

This Matter was originally heard by the Board of Stewards, Pacific Racing Association, on January 25, 2014, as Case No. 13GG0157. On March 9, 2014, the Board of Stewards issued a Proposed Decision which suspended Licensee Saul R. Acosta for thirty (30) days and imposed a fine in the sum of three thousand (\$3,000.00) dollars for violation of California Horse Racing Board (CHRB) Rule No. 1887 (a), Trainer to Insure Condition of Horse, and for violation of CHRB Rule No. 1843 (a) and (d), Medication, Drugs and Other Substances due to the presence of Phenylbutazone in excess of permitted level (2.5ug/ml) and the presence of Procaine in excess of permitted level (Class III).

By Notice of Decision Not to Adopt Proposed Decision and Order Directing Preparation of the Record, dated March 25, 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). The Licensee Acosta was notified of the Decision to Non-adopt the Proposed Decision, via registered mail, on March 25, 2014. On May 22, 2014, Licensee Acosta was provided, at no cost, via registered mail, the administrative record, including the transcript.

Licensee Acosta submitted a letter for the California Horse Racing Board to consider prior to rendering the Decision After Non-Adoption of Proposed Decision.

The California Horse Racing Board has reviewed the Matter on the record and issues its Decision in the Matter as follows:

The Proposed Decision is hereby adopted as to all factual findings as set forth in the March 9, 2014 Proposed Decision, to wit; Licensee Acosta violated CHRB Rule No. 1887 (a), Trainer to Insure Condition of Horse, and violated CHRB Rule No. 1843 (a) and (d), due to the presence of Phenylbutazone in excess of permitted level (2.5ug/ml) and the presence of Procaine in excess of permitted level (Class III).

The attached Proposed Decision of the Board of Stewards is hereby modified to reflect that the Licensee Saul R. Acosta is suspended for thirty (30) days and fined the sum of five thousand (\$5,000.00) dollars. The actual days of suspension and payment of the fine are to be set by the Board of Stewards.

IT IS SO ORDERED ON July18, 2014.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman



By: Rick Baedeker
Executive Director

BACKGROUND

The Respondent, Trainer Elmer G. January (hereinafter January) was charged in complaint #13GG0144, filed by Investigator Louis Quezada (hereinafter Quezada) on behalf of the California Horse Racing Board (hereinafter CHRB), with alleged violations of CHRB rules #1843 (a) & (d) (Medication, Drugs and Other Substances), #1843.1 (a) (Prohibited Drug Substances), #1844 (c) (1) (7) (Authorized Medication), #1859.5 (Disqualification Upon Positive Test Finding), #1887 (a) (Trainer to Insure Condition of Horse) and #1894 (Duties of Trainer) of the California Code of Regulations, Title 4, Division 4 .

The Respondent, Owner Saul R. Acosta (hereinafter Acosta) was charged in complaint #13GG0157 also filed by Investigator Quezada with alleged violation of CHRB rules #1653 (Responsibility for Prohibited Actions), #1843 (a) & (d) (Medication, Drugs and Other Substances), #1843.1 (a) (Prohibited Drug Substances), #1844 (c) (1 and 7) (Authorized Medication), #1887 (a) (Trainer to Insure Condition of Horse) and #1859.5 (Disqualification of Positive Test Finding).

The complaints state, in part:

(13GG0144 – January)

“On October 12, 2013 Trainer Elmer G. January started the horse KNIGHT OUGHT who finished 5th in the 3rd race at the Fresno County District Fair in Fresno, CA. The official blood sample #F10962 contained Phenylbutazone (2.5ug/ml). The official urine sample #F10962 contained 555 ng/ml of Procaine. Mr. Elmer G. January chose not to take a split sample. During the course of the investigation, it was determined that Mr. January delegated his duties as a trainer to another person. Procaine is a Category B penalty; the Phenylbutazone is a Category D penalty.”

(13GG0157 – Acosta)

“On October 12, 2013 Trainer Elmer G. January started the horse KNIGHT OUGHT who finished 5th in the 3rd race at the Fresno County District Fair in Fresno, CA. The official blood sample #F10962 contained Phenylbutazone (2.5ug/ml). The official urine sample #F10962 contained 555ng/ml of Procaine. Mr. Elmer G. January chose not to take a split sample. (The investigative case number for Mr. January is 13GG0144). Procaine is a Category B penalty.”

“During the course of the investigation it was determined that the owner, Saul R. Acosta, had allowed the horse to be used in a match race and that he was the person who had administered the Phenylbutazone while at the fair. The Phenylbutazone violation is a Category D penalty.”

At the commencement of the hearing the complaints were amended to include CHRB rule #1859.5 (Disqualification Upon Positive Test Finding) since the owner of KNIGHT OUGHT, Mr. Acosta, was present at the hearing and addressing the possible disqualification which will preclude having to conduct another hearing should KNIGHT OUGHT be found to have a positive test finding for Procaine.

EXHIBITS

CHRB EXHIBITS:

- | | |
|----|---|
| 1 | Elmer G. January complaint package. |
| 1A | Licensees not represented by counsel. |
| 2 | Saul R. Acosta complaint package. |
| 2A | Licensees not represented by counsel. |
| 3 | Data Packet from University of California, Davis Equine Analytical Laboratory for urine sample #F10962. |

FINDINGS OF FACT

I

Respondents January and Acosta waived their rights to separate hearings.

II

Both respondents waived their rights to be represented by counsel and agreed to go forward with the hearing without objection.

III

At all relevant times herein January was licensed as a trainer by the CHRB.

IV

At all relevant times herein Acosta was licensed as an owner by the CHRB.

V

January was the trainer of record for the horse KNIGHT OUGHT who finished fifth in the third race at the Fresno District Fair in Fresno, California on October 12, 2013.

VI

Acosta was the registered owner of KNIGHT OUGHT when the horse raced on October 12, 2013.

VII

Following the running of the third race KNIGHT OUGHT was taken to the test barn at the Fresno District Fair; blood and urine samples #F10962 were collected from the horse.

VIII

Blood and urine test samples #F10962 were sent to the Equine Analytical Chemistry Laboratory at the University of California, Davis, the official testing laboratory for the CHRB.

IX

Results of the tests conducted on sample #F10962 showed the presence of the prohibited drug substance Procaine at a level of 555 ng/ml in the urine and Phenylbutazone at a level of 2.5 ug/ml in the blood.

X

Procaine is a Class III prohibited drug substance per CHRB regulations.

XI

On October 25, 2013 Dr. Scott Stanley, Chief Chemist for the laboratory facility at the University of California, Davis, notified the CHRB of the test results on sample #F10962.

XII

On October 29, 2013 CHRB Headquarters in Sacramento notified Investigator Louis Quezada of the test results on sample #F10962 and the investigation which led to the filing of the instant complaint commenced.

XIII

Neither January or Acosta contested the chain of custody for sample #F10962.

XIV

Quezada stated that during the investigative process both January and Acosta have been forthright and cooperative.

XV

Acosta acknowledged racing KNIGHT OUGHT at Los Alamitos* with Antonio Soto as the trainer.

XVI

Acosta raced the horse KNIGHT OUGHT in a match race** at Delano, CA in September prior to the Fresno Meeting.

XVII

Acosta had care and custody of KNIGHT OUGHT at his ranch prior to bringing the horse onto the grounds of the Fresno County District Fair.

XVIII

Acosta contacted Manuel Mena prior to the Fresno County District Fair asking him how he could enter his horse and if he knew any trainers.

XIX

Acosta testified Manuel Mena entered the horse to race.

XX

Acosta brought KNIGHT OUGHT onto the ground at the Fresno County District Fair and placed the horse under Mr. January's name at Mr. Mena's direction.

XXI

Acosta was unaware Mr. Mena was not in communication with Mr. January regarding the care and racing of the horse.

XXII

Acosta testified that Mr. Mena accepted responsibility for the care of the horse after he was on the Fresno Fair grounds and instructed Acosta to place the horse in a portable stall away from January's stable.

XXIII

Acosta stated he gave Mr. January one hundred dollars after the horse raced to cover the insurance cost for the Workman's Compensation Insurance.

XXIV

Acosta stated that he gave the horse "Bute" (Phenylbutazone) the day before the horse was brought to the track.

XXV

Acosta acknowledged administering an injection of penicillin*** on two consecutive days prior to the race in Fresno because the horse was coughing.

*Los Alamitos Race Course is a horse racing track in Cypress, California that is regulated by the CHRB.

** Match racing is unregulated racing and illegal in California.

***Penicillin: most injectable penicillins contain Procaine which acts as a numbing agent and slows the absorption rate of Penicillin.

XXVI

CHRB regulations allow a horse that has been entered in a race to ship in to the track as long as the horse is at that facility twenty-four hours before the race.

XXVII

On the day KNIGHT OUGHT was scheduled to race January found out the horse was listed under his name as the trainer when he saw a racing program.

XXVIII

January testified KNIGHT OUGHT was not stabled in his barn and did not see the horse prior to the race.

XXIX

January testified he found out the outrider Manuel Mena entered the horse to race on October 12, 2013 in the third race at the Fresno County District Fair.

XXX

Manuel Mena worked as an outrider at the Fresno County District Fair.

XXXI

Investigator Quezada reported in his investigation report that Mr. Mena acknowledged he runs horses out of Santa Anita and Los Alamitos under Elmer January's name. He typically pays him two hundred (\$200.00) dollars each time that he enters the horse under his name and the last time he entered a horse on his behalf was on Sunday, October 6, 2013.

XXXII

Per Investigator Quezada's report Mr. Mena met Elmer January a few years back and they have worked together ever since.

XXXIII

January testified that he allowed people to use his name on horses he does not train at the Fairs.

XXXIV

January denied giving Mena the authority to put a horse in his name.

XXXV

January raced horses for Mr. Mena of which some were trained by him (January) and some were trained by Mena.

XXXVI

January acknowledged allowing someone to put his name down as the trainer of record when he didn't train the horse to fill the races on the fairs.

XXXVII

January acknowledged he receives one hundred (\$100.00) dollars from individuals who he allows to race horses under his name to cover insurance costs.

XXXVIII

January did not try to declare KNIGHT OUGHT from the race on October 12, 2013 after finding out he was listed as the trainer on the horse he had never seen.

XXXIX

January did not order the pre-race Lasix treatment the horse received on the day of the race.

XXXX

January testified to allowing people that run on the fairs to use his name as trainer at Los Alamitos but those people bring the horse to his barn.

XXXI

The Stewards acknowledge that there is a typographical error on the original complaints which cite alleged violation of CHRB rule 1844 (c) (7). The rule addresses the specified level of drug substances permitted in a urine test sample. There is no (c) (7) and the correct rule pertaining to the permitted level of Procaine should read (e) (7).

XXXII

CHRB recommended a penalty of thirty days suspensions for both January and Acosta with the trainer to also receive a fine of three thousand dollars.

CALIFORNIA HORSE RACING BOARD RULES California Code of Regulations, Title 4, Division 4

California Horse Racing Board rule 1653 states:

RESPONSIBILITY FOR PROHIBITED ACTIONS.

If a racing interest is comprised of more than one licensed owner, all owners comprising such racing interest are jointly and severally liable for any action of the racing interest.

California Horse Racing Board rule 1843 states in pertinent part:

MEDICATION, DRUGS AND OTHER SUBSTANCES.

It shall be the intent of these 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 the horse.

California Horse Racing Board rule 1843.1 (a) states:

PROHIBITED DRUG SUBSTANCES.

For purposes of this division, prohibited drug substance means:

- (a) Any drug, substance, medication or chemical foreign to the horse, whether natural or synthetic, or a metabolite or analog thereof, whose use is not expressly authorized in this article.

California Horse Racing Board rule 1844 states:

AUTHORIZED MEDICATION.

Consistent with the intent of these 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:

(a) No person shall administer a drug substance to any horse entered to race except upon authorization of the official veterinarian in conformance with these rules.

(b) No drug substance, other than authorized bleeder medication, shall be administered to a horse entered to race within 24 hours of the race in which entered.

(c) Not more than one approved non-steroidal anti-inflammatory drug substance (NSAID) may be administered to a horse that is entered to race and shall be only one of the following authorized drug substances:

(1) Phenylbutazone in a dosage amount that the test sample shall contain not more than 2 micrograms of the drug substance per milliliter of blood plasma or serum.

(2) Flunixin in a dosage amount that the test sample shall contain not more than 20 nanograms of the drug substance per milliliter of blood plasma or serum.

(3) Ketoprofen in a dosage amount that the test sample shall contain not more than 10 nanograms of the drug substance per milliliter of blood plasma or serum.

(4) Metabolites or analogues of approved NSAIDs may be present in post race test samples.

(d) If the official chemist reports that a blood test sample contains an authorized NSAID in excess of the limit for that drug substance under this rule, the official veterinarian shall, in conjunction with the veterinarian who administered or prescribed the authorized drug substance, establish a dosage amount or time of administration of the drug substance that will comply with the limits under this rule; or the official veterinarian may, if in his/her judgment no such reduced dosage amount or amendment to time of administration will result in a test sample level within the limits of this rule, withdraw authorization for the use of any one NSAID.

(e) Official urine test samples may contain one of the following drug substances, their metabolites or analogs, in an amount that does not exceed the specified levels:

(1) Acepromazine; 25 nanograms per milliliter

(2) Mepivacaine; 10 nanograms per milliliter

(3) Promazine; 25 nanograms per milliliter

(4) Albuterol; 1 nanograms per milliliter

(5) Atropine; 10 nanograms per milliliter

(6) Benzocaine; 50 nanograms per milliliter

(7) Procaine; 50 nanograms per milliliter

(8) Salicylates; 750 micrograms per milliliter

(9) Clenbuterol; 5 nanograms per milliliter

(10) Stanzolol; 1 nanograms per milliliter

(11) Nandrolone; 1 nanograms per milliliter for geldings, fillies and mares; 45 nanograms for males other than geldings.

(12) Boldenone; 15 nanograms per milliliter in males other than geldings.

(13) Testosterone; 20 nanograms per milliliter in geldings.

(A) Testosterone at any level in males other than geldings is not a violation of this regulation.

(14) Testosterone; 55 nanograms per milliliter in fillies or mares

(f) Official blood test samples may contain clenbuterol in an amount not to exceed 25 picograms per milliliter of serum or plasma.

(g) Official blood test samples shall not contain any of the drug substances, or their metabolites or analogs listed in subsection (e)(1)-(8), and (e)(10)-(14).

(h) Procaine, following administration of procaine penicillin, is an authorized medication provided:

(1) Official blood test samples shall not contain any procaine, or its metabolites or analogs in excess of 25 nanograms per milliliter.

(2) all procaine penicillin administrations have been reported pursuant to Rule 1842 of this division,

(3) procaine penicillin was not administered after entry to race,

(4) the horse was under surveillance for a minimum of six hours prior to racing.

(i) All expenses related to surveillance and testing for procaine under subsection (h) of this regulation shall be paid by the owner of the horse.

California Horse Racing Board rule 1859.5 states:

DISQUALIFICATION UPON POSITIVE TEST FINDING

A finding by the stewards that an official test sample from a horse participating in any race contained a prohibited substance as defined in this article, which is determined to be in class levels 1-3 under Rule 1843.2 of this division, unless a split sample tested by the owner or trainer under Rule 1859.25 of this division fails to confirm the presence of the prohibited drug substance determined to be in class levels 1-3, shall require disqualification of the horse from the race in which it participated and forfeiture any purse, award, prize or record for the race, and the horse shall be deemed unplaced in that race. Disqualification shall occur regardless of culpability for the condition of the horse.

California Horse Racing Board rule 1887(a) states:

TRAINER TO INSURE CONDITION OF HORSE.

- (a) 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 the urine or blood test samples or other tests, prove positive showing the presence of any prohibited drug substance defined in 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.

California Horse Racing Board rule 1894 states:

DUTIES OF TRAINER.

Trainers are responsible for the condition of horses in their care and are presumed to know the rules. A trainer represents the owner relative to horses which he is training in the matter of entries, declarations, and the naming of jockeys or drivers, unless the owner notifies the stewards in writing to the contrary. A trainer is responsible for the timely attendance of his horse at the receiving barn and paddock and he shall attend his horse in the paddock and be present to supervise the saddling except when relieved of such duty by the stewards. No trainer shall delegate or sublet his duties as a trainer except as provided in this article, nor shall a trainer have any interest in the earnings, winnings, or bonuses of any other trainer.

DISCUSSION

The first matter to be decided is whether there was there a positive test for urine sample #F10962 taken from the horse KNIGHT OUGHT that raced in the 3rd race at the Fresno County District Fair on October 12, 2013. The uncontested evidence presented from the CHRB official laboratory at Davis shows that KNIGHT OUGHT'S urine sample #F10962 tested positive for the presence of Procaine at a level of 555 ug/ml which is in excess of the permitted 50 nanogram level and the blood sample showed the presence of Phenylbutazone at a level of 2.5 ug/ml which is in excess of the permitted level of 2.0 ug/ml as stated in CHRB rule #1844 (Authorized Medication). Procaine is classified as a Class III drug and pursuant to CHRB rule #1859.5 disqualification is required. Pacific Racing Association ruling number 19 issued on January 26, 2014 reflects the mandatory disqualification.

The second matter to consider is whether January and Acosta are in violation of CHRB rule #1843 (a) (d). As mentioned in the rule 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 has been administered to the horse. The evidence in this case clearly shows both January and Acosta were negligent in the care and custody of this horse which led to the horse participating with a prohibited substance in its system.

The third matter to consider is CHRB rule #1894 (Duties of Trainer) which states in part: "No trainer shall delegate or sublet his duties as a trainer except as provided in this article..." The record clearly shows that January had an established practice of allowing people to race horses in his name, horses he was not training and in doing so he was subletting or delegating his training duties to someone else which are in violation of CHRB rule #1894. This case was no different since January, once again, allowed his name to be used with KNIGHT OUGHT even though he was not training the horse.

The last matter to consider is whether January and Acosta are culpable under CHRB rule #1887 (Trainer to Insure Condition of Horse) because of the positive test result. Rule #1887 is very explicit that the trainer is absolute insurer of and is responsible for the condition of a horse in a race"... regardless of the acts of third parties.

January testified he has had a past practice of allowing people to bring horses into the stable area of the racetrack and race those horses under his name although he was not actually training the horses. In this Board's opinion January had two options after finding out he was listed as the trainer of KNIGHT OUGHT and that was (1) submit a scratch card for the horse or (2) accept responsibility for the horse and allow the horse to race. Unfortunately, January elected to race the horse. If he had chosen to scratch the horse we would not be addressing a drug positive.

Further, rule #1887 states: "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 (emphasis added)." In this case owner Acosta was shown to have the care and attendance of the horse and testified he raced his horse at an unsanctioned match race in Delano, CA after which he treated the horse with Penicillin when the horse developed a cough prior to the Fresno race meet. The Penicillin treatment may have been the cause of the Procaine positive, however, whether it was or not, CHRB rule #1887 is in place to insure to the public that horses are racing free of prohibited drugs in their system. Acosta also initiated contact with someone other than the trainer so he could bring his horse to the racetrack and run the horse. He placed the horse under January's name when he brought the horse on the Fresno grounds, entered the horse, raced the horse and paid January one hundred dollars following the race all at Mena's direction. Acosta never established a normal owner and trainer relationship and circumvented that process throughout when he raced the horse, therefore, shares responsibility.

Outrider Manuel Mena, although not charged in this case, may also share responsibility for these violations.

After considering CHRB rule #1843.3 (Penalties for Medication Violations) for Category "B" penalties along with mitigating circumstances and aggravating factors this Board makes the following recommendation.

PROPOSED DECISION

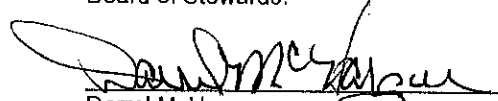
Trainer Elmer G. January who started the horse KNIGHT OUGHT, fifth place finisher in the third race at the Fresno District Fair on October 12, 2013 is hereby suspended thirty (30) days and fined the sum of three thousand dollars (\$3000.00) pursuant to California Horse Racing Board rule #1887 (a) (Trainer to Insure Condition of Horse) for violation of CHRB rule #1843 (a) & (d) (Medication, Drugs and Other Substances: Phenylbutazone in excess of permitted level (2.5 ug/ml) and Prohibited Substance: Procaine in excess of permitted level (Class III) and CHRB rule #1894 Duties of Trainer.

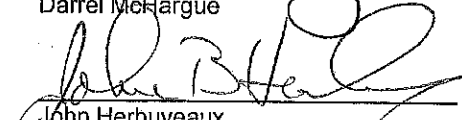
During the term of suspension all licenses and license privileges of Elmer G. January are suspended and pursuant to CHRB rule #1528 (Jurisdiction of Stewards), subject is denied access to all premises in this jurisdiction.

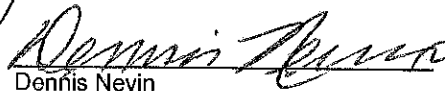
Owner Saul R. Acosta, owner of the horse KNIGHT OUGHT, fifth place finisher in the third race at the Fresno District Fair on October 12, 2013 is hereby suspended thirty (30) days and fined the sum of three thousand dollars (\$3000.00) pursuant to California Horse Racing Board rule #1887 (a) (Trainer to Insure Condition of Horse) for violation of CHRB rule #1843 (a) & (d) (Medication, Drugs and Other Substances: Phenylbutazone in excess of permitted level (2.5 ug/ml) and Prohibited Substance: Procaine in excess of permitted level (Class III).

During the term of suspension all licenses and license privileges of Saul R. Acosta are suspended and pursuant to CHRB rule #1528 (Jurisdiction of Stewards), subject is denied access to all premises in this jurisdiction.

Board of Stewards:


Darrel McHargue


John Herbuveaux


Dennis Nevin

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