

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

DOMINADOR FAMA
CHRB License #200505
Respondent

CHRB Case #14LA0103

DECISION

The attached Proposed Decision is adopted by the California Horse Racing Board as its Decision in the above-entitled matter.

The Decision is hereby remanded to the Board of Stewards to issue a ruling and order for payment of the three thousand dollar (\$3,000.00) fine and setting the thirty (30) days of suspension.

IT IS SO ORDERED ON November 20, 2014.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman


Rick Baedeker
Executive Director

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint/Accusation
against:

DOMINADOR FAMA,
Respondent

License Type: Trainer
License No. 200505-11/2016

Case No. 14LA0103

PROPOSED DECISION

INTRODUCTION

This matter was heard on September 5, 2014 before the Board of Stewards, George Slender, Randy Winick, and James Dreyer, in the Los Alamitos Executive Office.

Present at the hearing was the Respondent, Trainer Dominador Fama, Attorney Seth Weinstein representing Fama, Attorney Kevin Hosn representing the California Horse Racing Board, Dr. Rick Arthur, Dr. Scott Stanley, Dr. Nolton Pattio, Investigator Kevin Kitashima, test barn personnel Peggy Lighthill and Brian Mendoza, Owner Laura Bailey, Stewards Randy Winick, George Slender, and James Dreyer, and observers Sam Goldstein, Marvin Vallejo, Nadja Habinek, Samantha Kharasch and Lorie McHenry. Court Reporter Michelle Derieg transcribed the proceedings.

PROCEDURAL BACKGROUND

Trainer Dominador Fama was the trainer of record for the horse "Ernie Owl," who started in the fourth race at Los Alamitos Race Course on April 13, 2014. On April 25, 2014, Sacramento Headquarters emailed information to Supervising Investigator Tom Blake at Los Alamitos Race Course that "Ernie Owl" (Urine Sample #LA25650) tested positive for the class III prohibited drug 2-(1-hydroxyethyl) promazine (143 ng/ml), a metabolite of acepromazine, after finishing first in the fourth race on April 13, 2014. Trainer Fama was notified of the positive on April 26, 2014, and a barn inspection found no further violations. On April 29, 2014, Trainer Fama completed the forms for the split sample testing. PHAST was selected as the lab to conduct the testing of the split sample. On June 5, 2014, investigators received a Final Report from PHAST, confirming that the split sample #LA25650 contained the presence of 2-(1-hydroxyethyl) promazine sulfoxide (32.3 ng/ml) 2-(1-hydroxyethyl) promazine (17 ng/ml). Blood sample #LA25650 was negative for promazine, chlorpromazine, acepromazine, 2-(1-hydroxyethyl) promazine, and 2-(1-hydroxyethyl) promazine sulfate.

LIST OF EXHIBITS

Complainant / State

Exhibit 1 – Declaration of Receiving Barn employee Peggy Lighthill

2 – Declaration of Receiving Barn employee Brian Mendoza

3 – University of Davis Equine Analytic Chemistry Laboratory
Report prepared by Dr. Scott Stanely dated April 28, 2014

4 – Investigative Report #14LA0103 prepared by Investigator
Kevin Kitashima dated June 5, 2014

5 – Curriculum Vitae of Dr. Rick Arthur

Respondent / Defendant

Exhibit A – Identification of Acepromazine and its Metabolites

B – Report from Veterinary Diagnostic Laboratory Iowa State
University College of Veterinary Medicine

FINDINGS OF FACT

I.

At all times herein mentioned, Respondent was licensed by the California Horse Racing Board in the license category of "trainer."

II.

Respondent was the trainer of record for the horse "Ernie Owl" when it raced in the fourth race on April 13, 2014 at Los Alamitos Race Course. "Ernie Owl" finished first in the aforementioned race.

III.

A post-race urine sample (labeled sample #LA25650) was taken from "Ernie Owl" following the running of the race in accordance with California Horse Racing Board Rule #1858 (Test Sample Required) and was sent to Kenneth L. Maddy Equine Analytical Chemistry Lab of the California Horse Racing Board. This is the official testing lab of the California Horse Racing Board.

IV.

At all times herein mentioned, the chain of custody of urine sample #LA25650 from "Ernie Owl" was uninterrupted.

V.

After analyzing the sample, Maddy Laboratory reported a finding of the prohibited drug, 2-(1-hydroxyethyl) promazine (143 ng/ml), a metabolite of acepromazine, a class III substance, in the sample.

VI.

On April 26, 2014, Trainer Dominador Fama was notified that "Ernie Owl" had tested positive for 2-(1-hydroxyethyl) promazine, a metabolite of acepromazine.

VII.

On June 5, 2014, Investigator Kitashima received confirmation from PHAST Lab that urine sample #LA25650 contained 2-(1-hydroxyethyl) promazine sulfoxide (32.3 ng/ml). The sample was also positive for 2-(1-hydroxyethyl) promazine (17 ng/ml). Blood sample #LA25650 was negative for promazine, chlorpromazine, acepromazine, 2-(1-hydroxyethyl) promazine, and 2-(1-hydroxyethyl) promazine sulfate.

APPLICABLE RULES

- California Horse Racing Board Rules:
 - 1887 (Trainer to Insure Condition of Horse)
 - 1843 (Medication, Drugs and Other Substances)
 - 1859.5 (Disqualification Upon Positive Test Finding)
 - 1844 (Authorized Medication)

DISCUSSION

The first matter to be decided is whether there was a positive test for urine sample #LA25650 taken on April 13, 2014 at Los Alamitos Race Course from the horse "Ernie Owl," who ran in the fourth race, finishing first. The evidence presented from the California Horse Racing Board Lab at U.C. Davis contained a metabolite of acepromazine (143 ng/ml), a class III prohibited drug substance, which is a class "B" penalty. The trainer of record is Dominador "Dominic" Fama. This level of 143 ng/ml of acepromazine is in excess of the 25 nanogram level permitted by California Horse Racing Board Rule #1844 (Authorized Medication). Pursuant to California Horse Racing Board Rule #1859.5, disqualification is required. Los Alamitos Quarter Horse Racing Association Ruling #111, issued on June 7, 2014, reflects this disqualification.

The second issue to consider is whether Trainer Dominador Fama is in violation of California Horse Racing Board Rule #1843 (a)(b)&(d). As stated in this 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 or have been negligent in the care of the horse and is also evidence that the drug has been administered to the horse.

The third matter to consider is whether Trainer Fama is culpable under California Horse Racing Board Rule #1887 (Trainer to Insure Condition of Horse) because of the positive test result. California Horse Racing Board Rule #1887 is very explicit that the trainer is the absolute insurer of and is responsible for the condition of a horse in a race regardless of the acts of third parties.

Trainer Dominador Fama chose to be represented by counsel in this matter, and a formal hearing was conducted in the Los Alamitos Race Course Executive Office on September 5, 2014. A list of the participants can be found on the Introduction page.

Much of the respondent's legal defense was focused on a few items in particular, which included testimony from his attending veterinarian, Nolton Pattio, concerning his knowledge of acepromazine, such as metabolizing, dosage amount, and method of administration. Dr. Pattio was also asked if he knew of a study done in the United Kingdom by several sports science experts and also the British Horse Racing Authority concerning the administration of acepromazine in Thoroughbreds and how it metabolizes. Dr. Pattio was not aware of this study. The defense was trying to establish that it was impossible to have a urine reading of 143 ng/ml and not have a level established in the blood. In later testimony, U.C. Davis Chief Chemist Dr. Scott Stanley said that it is very common not to show in blood, because it is very fast acting and that is why the threshold levels are established for urine and not blood. Dr. Pattio testified that he only treated "Ernie Owl" with lasix the day of the race and that Dr. Hardgrove treated him with bute the evening before. Dr. Pattio did

say he prescribed a bottle of acepromazine pills to Dominic Fama for general use in his barn several months before, with instruction on the recommended withdrawal time before a race. This bottle of acepromazine was discovered in a locked cabinet in Mr. Fama's office.

Mr. Fama's counsel next tried to discredit or challenge the chain of custody procedure in the Receiving or Test Barn post-race. Test Barn Custodian, Peggy Lighthill, testified and documented that all protocols were adhered to and that nothing out of the ordinary was done in this case. After all her testimony was heard, counsel could not bring fourth anything damaging in the procedure in this Board's opinion.

Dr. Scott Stanley, Chief Chemist at the test laboratory at U.C. Davis, was called on to answer some of the defense counsel's questions, starting with his qualifications, which are considered excellent in the industry. He has been at the Maddy Laboratory for seventeen years. Dr. Stanley reviewed all of his and the lab's protocols and procedures for testing Class I, II, and III violations and assured through a redundancy of protocols that "Ernie Owl" was certified as "failed" after all testing.

The attorney for Mr. Fama next questioned the split sample lab at Iowa State University, which is where Mr. Fama had requested the split sample be sent. The split sample result came back from there considerably lower in level of concentration than the original sample from U.C. Davis, and it was explained by Medical Director Rick Arthur, who was now testifying, that Iowa State was not as sophisticated as the U.C. Davis lab and that it was the least costly lab to have a sample tested at, so many trainers choose them. It must be pointed out that even with the lower level of 49 ng/ml they recorded, it was still very much over the allowable decision level of 25 ng/ml by California Horse Racing Board Rule #1844 (Authorized Medication). Counsel wanted to know if a test sample can possibly be spiked, and Dr. Stanley testified that it must pass through the horse's system. Dr. Stanley also testified that although this is considered a small concentration, it still could affect a horse's performance. It also should be noted that Dr. Stanley stated that the testing procedure at U.C. Davis is considered the industry standard.

The next witness called to testify by the Deputy Attorney General was Investigator Kevin Kitashima, who described his procedure and the facts of the investigation. During Kitashima's investigation, he came upon a bottle of acepromazine in a locked cabinet in Mr. Fama's office, which was open and not sealed. It was asked of him if anyone unfamiliar with Fama's stable could identify any of his four or five horses, and he answered that no, they probably could not. Counsel asked if any safeguards were noticed. Mr. Kitashima stated Fama's barn was well kept but lacked surveillance cameras because Fama said it was cost-prohibitive and not provided by the track. There was no night watchman, but his groom did live at the barn. The defense counsel asked Mr. Kitashima if there were any pills missing from the bottle, to which he could not tell because he did not count them. He did

say that Fama had the only key to the locked cabinet, where the acepromazine was stored.

Director Rick Arthur was now called upon and asked several questions pertaining to his knowledge of acepromazine. Dr. Arthur, who has practiced 40 years, stated he knows quite a bit about acepromazine and how it dissipates in a horse's system. Counsel referred to a study at the University of Florida but was discredited by Dr. Arthur due to it being inaccurately applied to horses. He also confirmed what Dr. Stanley stated about it dissipating faster in blood than urine. He stated that Mr. Fama had a choice of labs and chose Iowa State, which he considered a bit inferior in their testing protocols from some of the others, but it was less costly. He also stated that U.C. Davis is more sophisticated in their methodology.

Trainer Dominic Fama is now called to testify on his own behalf, to which the Deputy Attorney General objects because of him not being on the pre-hearing list of witnesses. Mr. Fama described acepromazine as a "stupid" drug to use on horses and that there are other natural products and herbs to accomplish the effect desired in a race horse of sedation, etc. Mr. Fama, it must be noted, states that he does not disagree with the positive finding but denies he gave it himself. He states that anyone can get to his horses if they want and that he is just standing up for all the trainers that cannot afford representation in such cases involving California Horse Racing Board Rule #1877. It is impossible to be responsible for all the things that can happen. This is the end of all testimony from the hearing.

All trainers are allowed a defense of such alleged violations of medication rules by California Horse Racing Board Rule #1888 (Defense to Trainer Insurer Rule), which states in essence that a trainer charged with a violation of Rule #1887 may defend, mitigate, or appeal the charge if he shows, by a preponderance of the evidence, that he made every reasonable effort to protect the horses in his care from tampering by unauthorized persons, etc. Although the respondent established that he has a well-run barn with conscientious employees, there is little evidence offered of barn security other than the medication was in a locked cabinet in his office.

A review of the aggravating and mitigating factors is now required to determine if some deviation from the minimum penalty is appropriate:

- (1) *Past Medication Record of the Licensee:* Trainer Fama has one previous medication violation, a class IV methocarbamol in 2010. We consider this **mitigating**.
- (2) *The Potential of the Drug to Influence a Horse's Performance:* Acepromazine has a tranquilizing effect and can affect a horse's performance. The threshold of this drug is 25 ng/ml. The level in urine sample #LA25650 was 143 ng/ml. The split sample was 32.3 ng/ml. Both of these results are above the threshold level. **Aggravating**.

- (3) *The Legal Availability of the Drug:* This drug is readily available from any veterinarian. This is a **neutral** factor.
- (4) *Whether There is Reason to Believe the Responsible Party Knew of the Administration of the Drug or Intentionally Administered the Drug:* Trainer Fama denied giving "Ernie Owl" acepromazine, however, there was one bottle of acepromazine located in a locked cabinet in his office. His contention was that someone had gotten to "Ernie Owl" as he was the favorite in the race. Proving he knew of the administration of the drug or administered the drug himself would be very difficult to prove, however, California Horse Racing Board Rule #1887 (Trainer to Insure Condition of Horse) still applies in this situation. "Ernie Owl" was in his barn continuously. **Neutral**.
- (5) *Steps Taken by the Trainer to Safeguard the Horse:* Trainer Fama had no video surveillance, however, the acepromazine was in a locked cabinet in his office. **Neutral** factor.
- (6) *Steps Taken by the Owner to Safeguard Against Subsequent Medication Violations, Including but not Limited to, the Transfer of the Horse(s) to an Unaffiliated Trainer:* There is no evidence on this factor and is therefore **neutral**.
- (7) *Probability of Environmental Contamination or Inadvertent Exposure Due to Human Drug Use or Other Factors:* No evidence was presented on this issue. **Neutral**.
- (8) *Purse of the Race:* This is **mitigating** because the purse had a value of \$8,000, which is rather small.
- (9) *Whether the Drug Found to Be Present in the Official Sample was one for which the Horse was Receiving Treatment as Determined through the Process Described in Rule #1842 (Veterinary Report):* Veterinary reports do not indicate "Ernie Owl" was prescribed acepromazine. **Aggravating**.
- (10) *Whether there was any Suspicious Wagering Pattern on the Race:* There is no evidence of any suspicious wagering pattern. **Mitigating**.
- (11) *Whether the Licensed Trainer was Acting under the Advice of a Licensed Veterinarian:* The acepromazine was prescribed to Fama's barn by Dr. Nolton Pattio but did not specify any particular horse. **Aggravating**.

A review of the factors reveals that there are more mitigating and neutral factors than aggravating ones.

CONCLUSION

Following a formal hearing, this Board of Stewards concludes the class III prohibited drug substance, 2-(1-hydroxyethyl) promazine (143 ng/ml), a metabolite of acepromazine, was found in urine sample #LA25650 taken from the horse "Ernie Owl," the first place finisher in the fourth race at Los Alamitos Race Course on April 13, 2014. This finding requires the disqualification of "Ernie Owl" in accordance with California Horse Racing Board Rule #1859.5 (Disqualification Upon Positive Test Finding).

This Board of Stewards took judicial notice of the penalty guidelines as defined in California Horse Racing Board Rule #1843.3 (Penalties for Medication Violations). 2-(1-hydroxyethyl) promazine (143 ng/ml), a metabolite of acepromazine, is a class III drug that falls in the class "B" penalty.

PROPOSED DECISION

Given all of the foregoing, this Board of Stewards makes the following recommendation in this matter:

State of California
CALIFORNIA HORSE RACING BOARD

* * *

Trainer Dominador Fama who started the horse "Ernie Owl" in the fourth race on April 13, 2014 at Los Alamitos Race Course, is fined three thousand dollars (\$3,000.00)* and suspended thirty (30) days pursuant to California Horse Racing Board Rules #1887 (Trainer to Insure Condition of Horse), Rule #1859.5 (Disqualification Upon Positive Test), and #1844 (e-1) (Authorized Medication) for violation of California Horse Racing Board Rules #1843 (a,b,&d) (Medication, Drugs and Other Substances – 2-(1-hydroxyethyl) promazine (143 ng/ml), a metabolite of acepromazine – Class III).

During the term of suspension, all licenses and license privileges of Dominador Fama are suspended and pursuant to California Horse Racing Board Rule #1528 (Jurisdiction of Stewards to Suspend or Fine), Dominador Fama is denied access to all premises in this jurisdiction.

*California Horse Racing Board Rule #1532 states that all fines shall be paid to the paymaster of purses within seven (7) days of imposition [-----] or the license of the person upon whom the fine was imposed shall be suspended.

Lic# 200505-11/2016

Case# 14LA0103

DATED: 10/19/2014

By the Los Alamitos Board of Stewards:

Randy Wick
George Blenden
James Dwyer

RECEIVED
CHRB
2014 NOV -3 AM 9:30