

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

MATTHEW FALES
CHRB License #321126
Respondent

CHRB Case Nos. 17LA0352

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 fifteen hundred (\$1,500.00) fine and setting the thirty (30) days of suspension.

IT IS SO ORDERED ON February 22, 2018.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman



Rick Baedeker
Executive Director

State of California

CALIFORNIA HORSE RACING BOARD

**PROPOSED DECISION
of the
BOARD OF STEWARDS**

Los Alamitos Race Course

Date: December 29, 2017

In the Matter of the Complaint Against:

Name

Respondent: Matthew Fales

Case# 17LA0352

INTRODUCTION

This matter was heard before the Board of Stewards, Ronald Church, Tom Ward, and James Dreyer, in the Los Alamitos Stewards' Office December 29, 2017.

Present at the hearing was the Respondent, Matthew Fales, his father Ralph Fales, Investigator Kevin Kitashima and Stewards Tom Ward, Ronald Church and James Dreyer. Court Reporter Michelle Derieg transcribed the proceedings.

PROCEDURAL BACKGROUND

Trainer Matthew Fales was the trainer of record for the horse "My Favorite Cartel," who started in the 4th race at Los Alamitos Race Course on October 22, 2017. On November 9, 2017, Sacramento Headquarters emailed information to Supervising Investigator Tom Blake at Los Alamitos Race Course that "My Favorite Cartel" (Urine Sample #LA38707) tested positive for the class II prohibited drug Levamisole after finishing 1st in the 4th race on October 22, 2017. Trainer Matthew Fales was notified of the positive on November 9, 2017 and a barn inspection found Bute, without a proper label, the OTC Medication used on the horses for ringworm were seized; Item #1 contained Clotrimazole, Item #2 No drugs detected, Item #3 contained Miconazole, Item #4 contained Tolnaftate.

Trainer Fales and Trainer Wells declined to have the split sample tested.

LIST OF EXHIBITS

Complainant / State California Horse Racing Board Complaint
#17LA0352

Respondent / Defendant No exhibits submitted

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 "My Favorite Cartel" when it raced in the 4th race on October 22, 2017 at Los Alamitos Race Course. "My Favorite Cartel" finished 1st in the aforementioned race.

III.

A post-race urine sample (labeled sample #LA38707) was taken from "My Favorite Cartel" 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 #LA38707 from "My Favorite Cartel" was uninterrupted.

V.

After analyzing the sample, Maddy Laboratory reported a finding of the prohibited drug, Levamisole, in the sample, a class II substance.

VI.

On November 9, 2017, Respondent was notified.

VII.

The respondent declined to have a split sample tested.

APPLICABLE RULES

CHRB rule violations listed in the complaint

- Rule 1887 (Trainer or Owner to Insure Condition of Horse)
- Rule 1843 (a & d) (Medication, Drugs and Other Substances)
- Rule 1843.1 (a) (Prohibited Drug Substances)
- Rule 1859.5 (Disqualification Upon Positive Test Finding)

DISCUSSION

Considering Matthew Fales' short tenure as a trainer, 2016 to the present, he has a respectable medication history. He has had one double NSAID violation.

Drug testing of race horse urine has led to the revelation that among Levamisole equine metabolites are both Pemoline and Aminorex, stimulants that are forbidden by racing authorities. Trainer Fales testified that he was using the medication to treat ringworm/girthworm. This Board of Stewards is of the opinion that the latter is more plausible than the former.

Trainer Fales stated he does not use Levamisole in his barn. He stated he does use over the counter medication for ringworm/girthworm on his horses. Fales stated he normally purchases the over the counter medication at Wal-Mart to use on the horses. He also stated that every horse that has ringworm/girthworm is treated with the medication at least once per day.

After being made aware of his choice of establishments to purchase medication for his horses we felt it is a miracle this is the first positive he has had.

The Stewards advised trainer Fales of the risks involved in purchasing medications in this manner. He was warned, however, that if the plans to continue this routine he should at the very least consult with either Dr. Pattio or Dr. Arthur and ask their advice on any over the counter medications he intends to use.

After reading trainer Fales statement and listening to his testimony under oath this Board of Stewards feels Mr. Fales had no idea that the medication he was using to treat ringworm/girthworm had the potential to act as a stimulant.

The inquiry will now go to the penalty phase as outlined by California Horse Racing Board Rule #1843.3 (Penalties for Medication Violations), which allows for aggravating and mitigating factors that would permit deviation from the penalties outlined in the text of that rule.

This is a Class II violation with a Class "B" penalty.

A review of the aggravating and mitigating factors is now required:

- (1) *Past Medication Record of the Licensee:* Trainer Fales has had one medication violation, a double NSAIDs. Mitigating.
- (2) *The Potential of the Drug to Influence a Horse's Performance:* The possibility that Levamisole can enhance a horse's performance does exist. Aggravating
- (3) *The Legal Availability of the Drug:* The product containing Levamisole was purchased over the counter in a drug store. Aggravating.
- (4) *Whether There is Reason to Believe the Responsible Party Knew of the Administration of the Drug or Intentionally Administered the Drug:* Trainer Fales stated he had purchased medication at Wal-Mart to treat "My Favorite Cartel" for ringworm/girthworm. The Stewards do not believe Mr. Fales had any idea of the potential of the medication to enhance a horse's performance and purchased it solely to treat "My Favorite Cartel's" ringworm/girthworm. Mitigating.
- (5) *Steps Taken by the Trainer to Safeguard the Horse:* This is a neutral factor, Trainer Fales was treating a horse with ringworm/girthworm.
- (6) *Steps Taken by the Trainer 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. Neutral.
- (7) *Probability of Environmental Contamination or Inadvertent Exposure Due to Human Drug Use or Other Factors:* There is no evidence of such and is therefore neutral
- (8) *Purse of the Race:* \$4,000 Mitigating.
- (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):* According to veterinarian reports there was no Levamisole prescribed Aggravating
- (10) *Whether there was any Suspicious Wagering Pattern on the Race:* No evidence of any unusual wagering pattern - Mitigating
- (11) *Whether the Licensed trainer was Acting under the Advice of a Licensed Veterinarian:* There is no evidence of any veterinarians advice or approval of this medication. Aggravating.

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

CONCLUSION

Following a formal hearing, this Board of Stewards concludes the class II prohibited drug Levamisole was found in urine sample #LA38707 taken from the horse "My Favorite Cartel," the 1st place finisher in the 4th race at Los Alamitos Race Course on October 22, 2017. This finding requires the disqualification of "My Favorite Cartel" in accordance with California Horse Racing Board Rule #1859.5.

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). Levamisole is a class II 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

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TRAINER MATTHEW FALES WHO STARTED THE HORSE "MY FAVORITE CARTEL" IN THE FOURTH RACE ON OCTOBER 22, 2017 AT LOS ALAMITOS RACE COURSE IS FINED ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)* AND SUSPENDED THIRTY (30) DAYS) (-----) PURSUANT TO CALIFORNIA HORSE RACING BOARD RULE #1887 (TRAINER OR OWNER TO INSURE CONDITION OF HORSE) AND RULE #1859.5 (DISQUALIFICATION UPON POSITIVE TEST) FOR VIOLATION OF CALIFORNIA HORSE RACING BOARD RULES #1843 (a & d) (MEDICATION, DRUGS AND OTHER SUBSTANCES) (LEVAMISOLE - CLASS II) #1843.1 (a) (PROHIBITED DRUG SUBSTANCES).

DURING THE TERM OF SUSPENSION ALL LICENSES AND LICENSE PRIVILEGES OF MATTHEW FALES ARE SUSPENDED AND PURSUANT TO CALIFORNIA HORSE RACING BOARD RULE #1528 (JURISDICTION OF STEWARDS TO SUSPEND OR FINE) MATTHEW FALES 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# 321126 – 09/2018

Case# 17LA0352

PROPOSED DECISION

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

Dated January 12, 2018 by this Board of Stewards:

James Dreyer
Steward James Dreyer

Ronald Church
Steward Ronald Church

Tom Ward
Steward Tom Ward

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STEWARDS