

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

MIGUEL GONZALEZ
CHRB License #283245
Respondent

CHRB Case #15SW0048

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 five thousand dollar (\$5,000.00) fine and setting the sixty (60) days of suspension.

IT IS SO ORDERED ON March 1, 2016.

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**

Pacific Racing Association
Golden Gate Fields

February 6, 2016

IN THE MATTER OF:

California Horse Racing Board
vs. Miguel Gonzalez – Case No. 15SW0048

INTRODUCTION

This matter came before stewards Dennis Nevin, John Herbuveaux and Darrel McHargue for hearing at Golden Gate Fields on December 9, 2015.

Present at that hearing were Miguel Gonzalez; Brian Pitnick (Attorney); Carol Nolan, California Horse Racing Board (hereinafter CHRB) investigator; Phil Laird, CHRB Counsel; and Carla Romero, Spanish interpreter. The hearing was transcribed by Christine Niccoli, a certified shorthand reporter.

At that evidentiary hearing, the parties were allowed to introduce relevant exhibits, produce witnesses for examination, and cross examination and offer argument. Documentary evidence was submitted and testimony was heard. The hearing was closed and the matter was deemed submitted.

ISSUES TO BE DETERMINED

Mr. Gonzalez was charged with alleged violation of California Horse Racing Board rules embodied in Title 4, Division 4, California Code of Regulations (hereinafter rules), CHRB rules 1843 (a) (d) (Medication, Drugs and Other Substances), 1843.1 (a) (Prohibited Drug Substances), 1859.5 (Disqualification Upon Positive Test Findings) and 1887 (a) (Trainer to Insure Condition of Horse).

The previous allegations were based on a report from UC Davis Equine Analytical Chemistry Laboratory that indicated test sample #F13568 showed the presence of Clenbuterol, a prohibited class III drug substance.

LIST OF EXHIBITS

CHRB Exhibit 1 – Complaint package for case 15SW0048
CHRB Exhibit 2 – University of California Davis, Equine Analytical Chemistry Laboratory report for the urine sample #F13568 (Data Package).

FINDINGS OF FACT

I

Miguel Gonzalez was the trainer of the quarter horse LUCAS CZECH which finished 1st in the 2nd race at the Sonoma County Fair in Santa Rosa, CA on August 14, 2015.

II

Miguel Gonzalez was issued his current CHRB trainers license on October 3, 2013 and that license is valid through September, 2016.

III

Mr. Gonzalez's license history in relevant part has one prior medication violation for which he was fined \$500.00 in January 2011 and a recent suspension of 180 days was issued in PRTG ruling #11 dated September 13, 2014 for violation of CHRB rules 1489 (g) (j), 1629, 1878, and 1894.

IV

David Munguia was issued a CHRB owners license on June 20, 2014 and that license is valid through August, 2016.

V

David Munguia owns the quarter horse LUCAS CZECH and was the owner when the horse raced on August 13, 2015.

VI

CHRB investigator Nolan through her investigation concluded the owner of the horse LUCAS CZECH had nothing to do with the medication positive.

VII

LUCAS CZECH's post race urine sample #F13568 showed the presence of Clenbuterol at a level of 161 pg/ML when analyzed by University of California Davis, Equine Laboratory.

VIII

CHRB rule 1843.2 (Classification of Drug Substances) classified Clenbuterol as class III drug substance and per CHRB rule 1843.1 (Prohibited Drug Substance) Clenbuterol is a prohibited drug substance.

IX

CHRB rule 1843.3 (Penalties for Medication Violations) classified a violation for Clenbuterol, a class III medication, as warranting a Category B Penalty.

X

CHRB Rule 1844 (Authorized Medication) was amended effective July 31, 2015, which provides that official urine tests for quarter horses cannot contain Clenbuterol exceeding 0 picograms per milliliter.

XI

Mr. Gonzalez presented testimony of having full care and custody of LUCAS CZECH at his private ranch.

XII

Mr. Gonzales has trained LUCAS CZECH for a year prior to the race at Santa Rosa.

XIII

Mr. Gonzales testified he never administered any medication to LUCAS CZECH and later acknowledged administering bute to the horse.

XIV

Mr. Gonzales presented testimony of never knowingly or intentionally giving any Clenbuterol to the horse, but may have accidentally.

XV

Mr. Gonzales testified he thought he had Clenbuterol at his ranch and obtained the medication from his veterinarian, Dr. Allison, but it was not prescribed for any specific horse.

XVI

Mr. Gonzalez presented testimony that he had no idea how LUCAS CZECH tested positive for Clenbuterol.

XVII

Mr. Gonzalez was at the ranch three weeks prior to the horse (LUCAS CZECH) running in the race at Santa Rosa and he cared for horse prior to the race.

XVIII

Mr. Gonzalez declined to have the split sample tested, but elected to have a hair sample tested that would show whether LUCAS CZECH was exposed to Clenbuterol for a long period of time. The result of the test showed the horse was not exposed to Clenbuterol for a long period of time.

XIX

The horse was shipped to Pleasanton on August 13, 2015, the day before it was scheduled to race at Santa Rosa.

XX

Mr. Gonzalez fed, watered and bedded the stalls of his horses at Pleasanton the day before the races and left the horses unattended by anyone before taking them to Santa Rosa the next day.

XXI

Pursuant to CHRB rule 1859.5 a finding of a class III prohibited substance in a post race test sample taken from a horse that races in a CHRB sanctioned race requires disqualification.

XXII

The executive director for the CHRB recommended a maximum penalty of a \$10,000.00 fine and a sixty day penalty.

APPLICABLE RULES

California Horse Racing Board Rules
California Code of Regulations, Title 4, Division 4

Alleged rule violation by Trainer Miguel Gonzalez:

1843 (a) (d) Medication, Drugs and Other Substances

1843.1 (a) Prohibited Drug Substances

1859.5 Disqualification Upon Positive Test Finding

1887 (a) Trainer to Insure Condition of Horse

The evidence of this case shows the horse LUCAS CZECH raced with a prohibited class III substance Clenbuterol in its system which by CHRB rule 1859.5 requires disqualification. That disqualification was memorialized in ruling #47 issued on December 11, 2015 at Pacific Racing Association.

The only other issue to be determined is who is responsible for the drug positive.

Horse racing is a highly regulated industry with medication restrictions in place to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interest of the public and racing participants through the prohibition or control of all drugs, medications and drug substances foreign to the horse. CHRB rule 1887 (Trainer to Insure Condition of Horse) in part places a strict liability on the trainer as the absolute insurer and responsibility for the condition of the horses, regardless of the acts of a third party. Although there was conjecture as to why the horse tested positive for Clenbuterol, there was no evidence presented of how the horse received the prohibited drug substance. The rule also allows any other person shown to have had the care or attendance of the horse may be fined or suspended. Through Mr. Gonzalez's testimony he had total care and custody of the horse for one year and was training the horse at his private ranch. CHRB rule 1843 (a) (d) states in part (c) 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. The horse LUCAS CZECH raced with a prohibited drug substance that was foreign to the horse which is not expressly provided and is a violation of the rule. 1843 (d) states in part: a finding by an official chemist that a test sample taken from a horse which

has not been approved by the Board for its use shall be prime facia evidence that the drug substance has been administered to the horse.

This is a prime facia case regarding the administration of Clenbuterol to the horse as Mr. Gonzalez testified he had no knowledge the horse received Clenbuterol and guessed that it may have been administered accidentally. There was evidence of negligence in the care and custody of LUCAS CZECH when Mr. Gonzalez took the horse to Pleasanton the day before the race and left the horse unguarded and unattended.

The use of Clenbuterol at any level in a quarter horse has been designated by the Board as a Category B penalty as set forth in the penalty guidelines. The first offense for a category B penalty is a 30-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a sixty day suspension and/or a minimum fine of \$500.00 absent mitigating factors. The presence of aggravating factors to be to impose a maximum fine of \$10,000.00.

In reaching a decision on a penalty and in compliance with CHRB rule 1843.3 (Penalties for Medication Violation) the following mitigating and aggravating circumstances were considered.

1. The license history has one medication violation for which Mr. Gonzalez was fined \$500.00 and he has a recent CHRB ruling issued against his license in which his license was suspended.
2. The prohibited drug Clenbuterol is a class III medication and has the potential to influence a horse's racing performance.
3. Clenbuterol is a legally available drug.
4. There was no evidence the responsible party knew of the administration of the drug or intentionally administered the drug.
5. Mr. Gonzalez failed to take steps to safeguard the horse when he left the horse unattended.
6. Does not apply
7. Does not apply
8. Neutral
9. Clenbuterol was not prescribed for the horse.
10. There were no suspicious wagering patterns on the horse.
11. Mr. Gonzalez may have Clenbuterol at his ranch, but it was not prescribed for any horse.

When all the mitigating and aggravating factors are considered a sixty day suspension and a \$5,000.00 penalty is the appropriate discipline in the case.

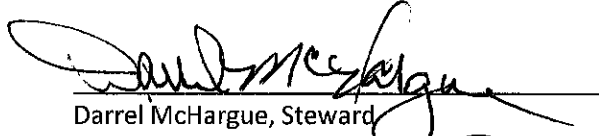
PROPOSED DECISION

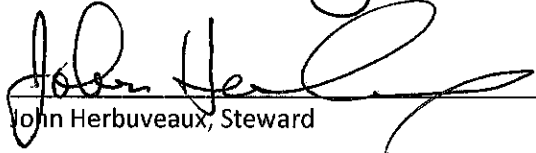
Trainer Miguel Gonzalez, who started the horse LUCAS CZECH winner of the second race at Sonoma County Fair (Santa Rosa) on August 24, 2015, is hereby suspended sixty (60) days and fined the sum of five thousand dollars (\$5,000.00) pursuant to California Horse Racing Board rule #1887 (Trainer to Insure Condition of Horse) for violation of California Horse Racing Board rules #1843 (a) (d) (Medication, Drugs and Other Substances, prohibited substance – Clenbuterol class 3 – first offense) and 1843.1 (a) (Prohibited Medication).

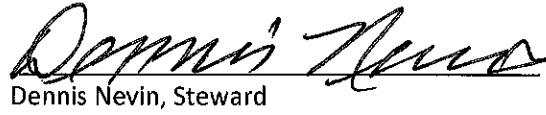
During the term of suspension all licensed and license privileges of Miguel Gonzales are suspended and pursuant to California Horse Racing Board rule #1528 (Jurisdiction of Stewards) subject is denied access to all premises in this jurisdiction.

BY ORDER OF THE
BOARD OF STEWARDS

Dated: 2/5/16


Darrel McHargue, Steward


John Herbuveaux, Steward


Dennis Nevin, Steward

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