

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

SANTOS N. MONTEMAYOR
CHRB License #292540

Respondent

CHRB Case #13LA0251

DECISION

The attached Proposed Decision by the Board of Stewards 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 setting the dates of suspension.

IT IS SO ORDERED ON February 24, 2014.

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

January 10, 2014

In the Matter of the Complaint Against:

Santos N. Montemayor
Respondent
Case #13LA0251

INTRODUCTION

This matter has been heard before the Board of Stewards, George Slender, Ruben Moreno, and James Dreyer, in the Los Alamitos Stewards' Office on December 20, 2013.

Present at the hearing was the respondent, Owner Santos Montemayor, his employee Genaro Sanchez, Investigator Kevin Kitashima, Safety Steward Tom McCarthy, and this Board of Stewards. Court Reporter Eulah Stewart transcribed the proceedings.

PROCEDURAL BACKGROUND

Owner Santos Montemayor was the owner of record for the horse "Mr TR Dasher," who started in the third race at Los Alamitos Race Course on September 22, 2013. On October 4, 2013, Sacramento Headquarters faxed information to Supervising Investigator Tom Blake at Los Alamitos Race Course that "Mr TR Dasher" (Urine Sample #LA24262) tested positive for the class III prohibited drug Clenbuterol after finishing second in the third race on September 22, 2013. Owner Montemayor was notified of the positive on October 4, 2013. On October 4, 2013, Trainer Zamudio completed the forms for the split sample testing. Pennsylvania Equine Toxicology and Research Laboratory was selected as the lab to conduct the testing of the split sample. On October 22, 2013, the Pennsylvania Equine Toxicology and Research Laboratory faxed information to the California Horse Racing Board confirming the presence of Clenbuterol, a class III prohibited drug, in urine sample #LA24262.

LIST OF EXHIBITS

Complainant / State

California Horse Racing Board Complaint
#13LA0251

Respondent / Defendant

No documents submitted

FINDINGS OF FACT

I.

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

II.

Respondent was the owner of record for the horse "Mr TR Dasher" when it raced in the third race on September 22, 2013 at Los Alamitos Race Course. "Mr TR Dasher" finished second in the aforementioned race.

III.

A post-race urine sample (labeled sample #LA24262) was taken from "Mr TR Dasher" 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 #LA24262 from "Mr TR Dasher" was uninterrupted.

V.

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

VI.

On October 4, 2013, in the presence of Supervising Investigator Tom Blake, Trainer Valentin Zamudio notified Owner Montemayor of the positive test.

VII.

The respondent elected to have a split sample sent to the Pennsylvania Equine Toxicology and Research Laboratory.

VIII.

On October 24, 2013, Investigator Kitashima received confirmation from Pennsylvania Equine Toxicology and Research Laboratory that urine sample #LA24262 contained Clenbuterol.

APPLICABLE RULES

California Horse Racing Board Rule 1843 (Medication, Drugs and Other Substances) states:

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.
- (b) No drug substance shall be administered to a horse, which is entered to compete in a race to be run in this State except for approved and authorized drug substances as provided in these rules.
- (c) No person other than a licensed veterinarian or animal health technician shall have in his/her possession any drug substance which can be administered to a horse, except such drug substance prescribed by a licensed veterinarian for a specific existing condition of a horse and which is properly labeled.
- (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.

California Horse Racing Board Rule 1859.5 (Disqualification Upon Positive Test Finding) states:

A finding by the stewards that an official test sample from a horse participating in any race contained a prohibited drug 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 of 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.

DISCUSSION

As the factual findings indicate, the Respondent owned a horse that tested positive for a drug substance, Clenbuterol, the presence of which is prohibited by California Horse Racing Board Rules and Regulations. The split sample that was sent to Pennsylvania Equine Toxicology and Research Laboratory also tested positive for Clenbuterol.

There is no dispute about the positive test finding by either the trainer of record or the owner. With the first issue in this case not disputed of the actual drug positive, the second portion of the equation, California Horse Racing Board Rule #1887 – Trainer to Insure Condition of Horse, needs to be addressed. Rule #1887 states in part, 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. Owner Montemayor testified that per his instructions, his employee, Genaro Sanchez, put “Mr TR Dasher” on a twelve to fourteen day regimen of Clenbuterol to treat a pulmonary problem. He also contends that the administration of the medication was discontinued thirty to thirty-five days prior to the horse racing. He stated that initially he was not planning to run the horse again because of the breathing problem, but Trainer Zamudio offered to reduce his training fee so he decided to give the horse another chance. With the exception of this one horse, all of the horses he has in training remain at the track with Trainers Jose De La Torre and Juan Aleman.

The investigation now goes to the penalty phase as outlined in California Horse Racing Board Rule #1843.3 (Penalties for Medication Violations), which differentiates specific penalties for medication positives as well as mitigating factors that would allow for deviation from the penalties. This is a class III violation that is a class “B” penalty category.

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

- (1) *Past Medication Record of the Licensee:* He has had no medication violations. **Mitigating.**
- (2) *The Potential of the Drug to Influence a Horse's Performance:* Clenbuterol can enhance a horse's performance; therefore, this is an **aggravating** factor.
- (3) *The Legal Availability of the Drug:* Clenbuterol is easily available from any veterinarian as this is not an illegal drug to use, just to race on. 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:* Does not apply.

- (5) *Steps Taken by the Trainer to Safeguard the Horse*: Does not apply.
- (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 was 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** as the purse of the race was rather small: \$8,295.
- (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)*: **Mitigating**; the horse was not prescribed Clenbuterol, and it is not a drug they can run on in California.
- (10) *Whether there was any Suspicious Wagering Pattern on the Race*: This is a **mitigating** factor because of no known evidence that wagering on this race was out of the ordinary.
- (11) *Whether the Licensed Trainer was Acting under the Advice of a Licensed Veterinarian*: Does not apply. **Neutral**.

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 (Clenbuterol) was found in urine sample #LA24262 taken from the horse "Mr TR Dasher," the second place finisher in the third race at Los Alamitos Race Course on September 22, 2013. This finding requires the disqualification of "Mr TR Dasher" 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). Clenbuterol 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

* * *

Owner Santos N. Montemayor is suspended for thirty (30) days for violation of California Horse Racing Board Rule #1843.3 (a,b&d) (Medication, Drugs and Other Substances).

In addition, Owner Montemayor's horse, "Mr TR Dasher," must pass a Board approved examination pursuant to California Horse Racing Board Rule #1846 before becoming eligible to be entered and be subject to drug testing at the owner's expense and be negative for prohibited drug substances as defined in California Horse Racing Board Rule #1843.1.

During the term of suspension, all licenses and license privileges of Santos Montemayor are suspended and pursuant to California Horse Racing Board Rule #1528 (Jurisdiction of Stewards), subject is denied access to 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# 292540-11/2015

Cases# 13LA0251

Dated 01/10/2014 by this Board of Stewards:


Steward James Dreyer


Steward Ruben Moreno


Steward George Slender

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