

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaints Against:

LORENZO RUIZ
CHRB License #297981

Respondent

CHRB Case Number 13LA0128
CHRB Case Number 13LA0129

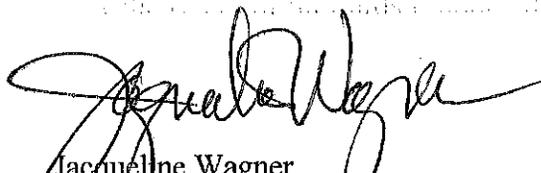
DECISION

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 and the payment of fine.

IT IS SO ORDERED ON November 21, 2013.

CALIFORNIA HORSE RACING BOARD
David Israel, Chairman


Jacqueline Wagner
Assistant Executive Director

State of California

CALIFORNIA HORSE RACING BOARD

**PROPOSED DECISION
of the
BOARD OF STEWARDS**

Los Alamitos Race Course

October 19, 2013

In the Matter of the Complaint Against:

**Lorenzo Ruiz
Respondent
Cases #13LA0128 & #13LA0129**

INTRODUCTION

This matter has been heard before the Board of Stewards, George Slender, Ruben Moreno and James Dreyer, in the Los Alamitos Race Course Stewards' Office on Friday, September 27, 2013.

Present at the hearing was the respondent, Trainer Lorenzo Ruiz, who waived his right to an attorney and represented himself, Chief Investigator Bill Westerman, Special Investigator Kevin Kitashima, who presented the case for the California Horse Racing Board, Whittier Narrows Feed Proprietor Ambrosio Ballon, and the Board of Stewards. Court Reporter Michelle Derieg recorded the proceedings.

PROCEDURAL BACKGROUND

Trainer Lorenzo Ruiz was the trainer of record for the horse "Willing Warrior," who started in the third race at Los Alamitos Race Course on April 26, 2013. On May 9, 2013, Sacramento Headquarters faxed information to Supervising Investigator Tom Blake at Los Alamitos Race Course that "Willing Warrior" (Urine Sample #LA23109) tested positive for the class III prohibited drug zilpaterol after winning the third race on April 26, 2013. Trainer Ruiz was notified of the positive on May 11, 2013, and a barn inspection found no further violations. Trainer Lorenzo Ruiz and Owner Luis Ruiz declined to have a split sample tested.

Trainer Lorenzo Ruiz was the trainer of record for the horse "Truco Latino," who started in the second race at Los Alamitos Race Course on April 28, 2013. On May 9, 2013, Sacramento Headquarters faxed information to Supervising Investigator Tom Blake at Los Alamitos Race Course that "Truco Latino" (Urine Sample #LA23140) tested positive for the class III prohibited drug zilpaterol after winning the second race on April 28, 2013. Trainer Lorenzo Ruiz was notified of the positive on May 11, 2013, and a barn inspection found no further violations. Both the trainer and the owner declined to have a split sample tested.

LIST OF EXHIBITS

Complainant / State

(1) California Horse Racing Board Complaints
#13LA0128 and #13LA0129

(2) Investigative Reports and Documents

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 trainer.

II.

Respondent was the trainer of record for the horse "Willing Warrior" when it raced in the third race on April 26, 2013 at Los Alamitos Race Course. "Willing Warrior" finished first in the aforementioned race.

III.

A post race urine sample (labeled sample #LA23109) was taken from "Willing Warrior" following the running of the race in accordance with California Horse Racing Board Rule #1858 (Test Sample Required) and was sent to the 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 #LA23109 from "Willing Warrior" was uninterrupted.

V.

Respondent was the trainer of record for the horse "Truco Latino" when it raced in the second race on April 28, 2013 at Los Alamitos Race Course. "Truco Latino" finished first in the aforementioned race.

VI.

A post race urine sample (labeled sample #LA23140) was taken from "Truco Latino" following the running of the race in accordance with California Horse Racing Board Rule #1858 (Test Sample Required) and was sent to the Kenneth L. Maddy Equine Analytical Chemistry Lab at the University of California, Davis. This is the official testing lab of the California Horse Racing Board.

VII.

At all times herein mentioned, the chain of custody of sample #LA23140 from "Truco Latino" was uninterrupted.

VIII.

After analyzing the samples, Maddy Laboratory reported a finding of the prohibited drug zilpaterol in both samples, a class III substance.

IX.

On May 11, 2013, Trainer Lorenzo Ruiz and Owners Emilio Quinonez and Luis Ruiz were notified that "Willing Warrior" and "Truco Latino" had tested positive for zilpaterol.

X.

The respondent declined to have both samples analyzed by an independent lab.

APPLICABLE RULES

California Horse Racing Board Rule 1887 (a&b) (Trainer to Insure Condition of Horse) states:

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

(b) Notwithstanding the above, if the Board or its agents fail to notify a trainer of a potential positive test within 21 calendar days from the date the sample was taken, the trainer shall not be deemed responsible under this rule unless it is shown by the preponderance of the evidence that the trainer administered the drug or other prohibited substance defined in Rule 1843.1 of this division, caused the administration or had knowledge of the administration.

California Horse Racing Board Rule 1843 (a,b&d) (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.

(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.

California Horse Racing Board Rule 1902 (Conduct Detrimental to Horse Racing) states:

No licensee shall engage in any conduct prohibited by this Division nor shall any licensee engage in any conduct which by its nature is detrimental to the best interests of horse racing including, but not limited to:

- (a) knowing association with any known bookmaker, known tout or known felon,
- (b) indictment or arrest for a crime involving moral turpitude or which is punishable by imprisonment in the state or federal prison, when such indictment or arrest is the subject of notorious or widespread publicity in the news media, and when there is probable cause to believe the licensee committed the offenses charged,
- (c) solicitation of or aiding and abetting any other person to participate in any act or conduct prohibited by this Division.

DISCUSSION

The first action required by California Horse Racing Board Rule #1859.5 (Disqualification Upon Positive Test Finding) was applied to this case on June 28, 2013, by the Los Alamitos Stewards, which was the issuing of Rulings #98 and #99 for the disqualification and purse redistribution of "Willing Warrior" and "Truco Latino" for detection of zilpaterol in the post-race samples. The trainer of record, Lorenzo Ruiz, did not request a split sample for either of these horses.

There was no dispute about the positive test findings by either the trainer of record or his two owners. With the first issue in this case not disputed of the actual drug positive by Trainer Ruiz, the second portion of the equation, that of trainer responsibility (California Horse Racing Board Rule #1887 – Trainer to Insure Condition of Horse), needs to be addressed and if there is any penalty that needs to be applied and to what extent, by determining if there are mitigating and/or aggravating circumstances in Mr. Ruiz's culpability. Trainer Ruiz is entitled to a defense of his responsibility by California Horse Racing Board Rule #1888 (Defense to Trainer Insurer Rule), which has four defenses. Sections (a), (b), and (d) (Procedural Defenses) do not apply in this case, and section (c), which asks the trainer to show by a preponderance of the evidence that he made every reasonable effort to protect the horses in his care from tampering by unauthorized persons, also does not apply either because this issue of contaminated feed was only made known to Ruiz after the fact of the two positive test findings. Mr. Ruiz stated that he was only aware of contaminated feed (Purina Omolene 200) by a conversation he overheard by Stable Superintendent Scott Craigmyle in the Racing Office in mid-April. Once he heard of this, he disposed of all the feed, both at the track and his ranch. Lorenzo said he purchased his feed from Generation West Feed and Whittier Narrows Feed Companies and that neither of them advised him of the tainted feed.

The first advisory from the California Horse Racing Board concerning contaminated feed with zilpaterol was posted in the Racing Office at Los Alamitos on March 22, 2013, and a subsequent notice dismissing all 48 positive tests statewide was posted on March 26, 2013. It included positive test findings between March 1, 2013 to this date (March 26, 2013). A directive issued by Executive Director Kirk Breed was issued on March 26, 2013, instructing all feed vendors to remove all Purina Sweet feed products produced at the Turlock plant from all California Horse Racing Board facilities. On April 3, 2013, a notice from the California Horse Racing Board lifted this feed ban.

Lorenzo Ruiz stated to the investigators that he usually buys up to six bags at a time as he needs enough for both his stable at Los Alamitos and his ranch in La Puente. Ruiz stated that after he purchases his feed, he regularly puts the new bags in 50-gallon drums when the old feed gets low, therefore the new gets mixed with the remaining old feed near the bottom.

Ruiz generally has a small stable at Los Alamitos, between four to six horse maximum at any one time. It seems plausible that with buying the amount of feed he does at any one time plus the small size of his stable that he might not go through his feed very quickly. It might also be possible that there may have been some tainted feed still in the 50-gallon drums when mixed with the new feed, which could lead to contamination well after the dates approved as contamination-free.

Throughout the investigation and hearing, Mr. Ruiz was completely candid and cooperated thoroughly.

The inquiry now goes to the penalty phase as outlined in California Horse Racing Board Rule #1843.3 (Penalties for Medication Violations), which differentiated 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 "A" penalty category, which calls for a minimum one year suspension absent mitigating circumstances and a minimum fine of \$10,000 absent mitigating circumstances.

A review of Mr. Ruiz's medication violation history reveals that he has had only one "methocarbomal" (robaxin) violation in the last three years and a high "bute" in 2009. This is a reasonably good record in our estimation. 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:* As stated above, he has had only two violations in the last five years, one being within the last three years. Both were NSAID violations, which are not major violations. We consider this somewhat **mitigating**.
- (2) *The Potential of the Drug to Influence a Horse's Performance:* Evidence has demonstrated that the medication could influence performance, therefore this is an **aggravating** factor.
- (3) *The Legal Availability of the Drug:* This drug is available but not for race horses; it is used in cattle. However, this still may be a **mitigating** factor due to it being found in tainted feed.
- (4) *Whether There is Reason to Believe the Responsible Party Knew of the Administration of the Drug or Intentionally Administered the Drug:* This is a **mitigating** factor as Mr. Ruiz was unaware that he was using contaminated feed. Although he may have been responsible for being aware of the posted notices, it appears that he did not see the notices in the Racing Office, which were on a table. Ruiz stated that he only goes in the Racing Office occasionally and that he never saw it on the overnight or heard it from the feed man or his fellow trainers until overhearing Scott Craigmyle, the stall superintendent, speaking about it in the Racing Office one day in mid-April while in there on other business.

- (5) *Steps Taken by the Trainer to Safeguard the Horse:* This is a **neutral** factor as Mr. Ruiz contended he had no knowledge of the contaminated feed until mid-April. Once he heard of it, he disposed all the feed at his barn and ranch.
- (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:* This is a **neutral** factor.
- (8) *Purse of the Race:* This is **mitigating** because the purse of the race was not very large, \$8,000 and \$9,000 respectively.
- (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**; these horses were not prescribed, and zilpaterol is not a legal drug for race horses 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:* **Mitigating** as there is no evidence of his or any veterinarian's advice for approval of this drug to be used on his horses.

A review of the factors reveals that there are more mitigating and neutral factors than aggravating ones, and therefore, a deviation from the minimum penalty is in order.

CONCLUSION

Following a formal hearing, this Board of Stewards concludes the Class III prohibited drug substance (zilpaterol) was found in urine sample #LA23109 taken from the horse "Willing Warrior," the first place finisher in the third race at Los Alamitos Race Course on April 26, 2013. Urine sample #LA23140 taken from the horse "Truco Latino," the first place finisher in the second race at Los Alamitos Race Course on April 28, 2013 also tested positive for the prohibited drug substance zilpaterol. These findings require the disqualification of both "Willing Warrior" and "Truco Latino" in accordance with California Horse Racing Board Rule #1859.5.

The issue of culpability with regard to California Horse Racing Board Rule #1887 placed the responsibility on Trainer Lorenzo Ruiz. To avoid such responsibility, Mr. Ruiz had the burden to present convincing evidence and/or testimony in accordance with California Horse Racing Board Rule #1888 and, having failed to do so, he must be held accountable.

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). Zilpaterol is a Class III drug that falls in the Class A 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 Lorenzo Ruiz, who started the horses "Willing Warrior" in the third race on April 26, 2013 and "Truco Latino" in the second race on April 28, 2013 at Los Alamitos Race Course, is suspended sixty (60) days, fined the sum of one thousand dollars (\$1,000.00)* and placed on probation for one year from the date of this ruling pursuant to California Horse Racing Board Rule #1887 (Trainer to Insure Condition of Horse) and Rule #1859.5 (Disqualification Upon Positive Test) for violation of California Horse Racing Board Rules #1843 (a)(b) & (d) (Medication, Drugs and Other Substances – Prohibited Substance – Zilpaterol [Class III]) and #1902 (Conduct Detrimental to Horse Racing).

For cause, forty (40) days of the sixty (60) day suspension are stayed provided Mr. Ruiz is not in violation of California Horse Racing Board Rules and Regulations #1843, #1843.6 and #1887 regarding Class I, II, or III drug substances during the term of probation. If Mr. Ruiz violates a condition of his probation, the above referenced forty (40) day stay of suspension shall be lifted and the actual suspension shall be imposed after notice and hearing. The twenty (20) day suspension shall be served from [-----] through [-----].

During the term of suspension, all licenses and license privileges of Trainer Lorenzo Ruiz 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# 297981-08/2013
D.O.B. 08/10/1969
Cases# 13LA0128 & #13LA0129

Dated October 19, 2013 by this Board of Stewards:


Steward James Dreyer


Steward Ruben Moreno


Steward George Slender