BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint filed Against:

MIGUEL RODRIGUEZ
CHRB License #280861
Trainer

Case No. 11LA0103

DECISION

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

The Decision shall become effective on August 30, 2011. Motion for Reconsideration must be filed on or before August 30, 2011.

IT IS SO ORDERED ON July 21, 2011.

CALIFORNIA HORSE RACING BOARD
Keith Brackpool, Chairman

Kirk E. Breed
Executive Director

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STATE OF CALIFORNIA

In the Matter of the Complaint filed Against:	)	
MIGUEL RODRIGUEZ, CHRB License #280861 Trainer	)	CHRB Case No. 11LA0103

PROPOSED DECISION

This matter was heard on June 17, 2011 by C. Scott Chaney, a Hearing Officer designated under California Horse Racing Board rule 1414 (Appointment of Referee) at Los Alamitos Race Track in Los Alamitos, CA.

The Respondent, licensed trainer Miguel Rodriguez (hereinafter "Respondent" or "Mr. Rodriguez"), represented himself.

The California Horse Racing Board (hereinafter "CHRB") was represented by CHRB Investigator Tom Blake.

Also present at the hearing was CHRB Supervisor Ken Lady. The proceedings were recorded by court reporter Barbara Weinstein.

PROCEDURAL BACKGROUND

On April 1, 2011, Respondent started the quarter horse "Dash Beduina" in the ninth race at Los Alamitos Race Course in Los Alamitos, CA. Following that race, the winner "Dash Beduina" was drug tested. The medication Clenbuterol was discovered in the horse's blood and urine samples in the amount of 71 pg/mL and 8.3 ng/mL respectively. Given that those levels are in excess of those permitted by the CHRB rules and regulations, the medication positive (overages are considered positives under the rules, see CHRB rule 1843.1. Prohibited Drug Substances) was therefore reported to the CHRB by the laboratory. Respondent was notified of the positive and declined to request that the split sample be tested for confirmation. The Board of Stewards conducted a hearing and subsequently disqualified "Dash Beduina" based on the substance overage. The CHRB then filed an administrative complaint against Mr. Rodriguez alleging violation of certain CHRB rules surrounding the medication positive. The purpose of this hearing is to adjudicate those alleged violations. Both parties were noticed and the hearing was scheduled for June 17, 2011. On that day, the hearing was called to order at

approximately 1 p.m. in accordance with the notice supplied to all parties. The CHRB submitted documentary evidence relevant to the matter, while Respondent testified himself. The record was closed and the matter deemed submitted that same day.

LIST OF EXHIBITS

CHRB Exhibit #1 – CHRB document entitled "Investigative Report #11LA0103" which included the complaint, a drug substance description, a copy of several CHRB rules, report of investigation, five documents pertaining to the medication positive and notification, information with respect to the aforementioned race, veterinary records of "Dash Beduina," two declarations and a license history of Respondent and other associated individuals.

FACTUAL FINDINGS

I

At all times herein mentioned, Miguel Rodriguez was licensed by the CHRB in the license category of trainer, and at all times herein mentioned the trainer of the quarter horse "Dash Beduina."

II

On April 1, 2011, the quarter horse "Dash Beduina" ran in the ninth race at Los Alamitos Race Course.

III

Following the running of the race, blood and urine samples were obtained from "Dash Beduina" and transported to the University of California, Davis, Maddy Analytical Laboratory, the official testing laboratory for the CHRB.

IV

After testing the samples, U.C. Davis laboratory reported that the post race sample number LA17606, taken from "Dash Beduina," contained the medication clenbuterol at a level of 8.3 ng/mL in the urine and 71 pg/mL in the blood.

V

The levels of clenbuterol in the urine and blood exceeded the acceptable levels of 5 ng/mL and 25 pg/mL respectively, outlined in the CHRB rules and regulations.

VI

No test of the split sample was requested or performed.

VII

Clenbuterol is a class 3 drug substance and falls under the penalty category class B.

APPLICABLE LAWS AND REGULATIONS

California Horse Racing Board rule 1843 (a & d). Medication, Drugs and Other Substances.

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.

(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 1844 (b), (e)(9) & (f). Authorized Medication.

Consistent with the intent of these rules, drug substances and medications authorized by the Board for use may be administered to safeguard the health of the horse entered to race provided that:

(b) No drug substance, other than authorized bleeder medication, shall be administered to a horse entered to race within 24 hours of the race in which entered.

(e)(9) Official urine test samples may contain one of the following drug substances, their metabolites or analogs, in an amount that does not exceed the specified levels: Clenbuterol: 5 nanograms per milliliter.

(f) Official blood test samples may contain clenbuterol in an amount not to exceed 25 picograms per milliliter of serum or plasma.

California Horse Racing Board rule 1887(a). Trainer to Insure Condition of Horse.

(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.

DISCUSSION OF ISSUES

The issues in this particular case are fairly straightforward. Evidence at hearing revealed that trainer Miguel Rodriguez trained a horse that tested positive for excessive levels of the medication Clenbuterol. Mr. Rodriguez explained that he had in fact administered the medication to "Dash Beduina" in what he believed to be a therapeutic manner as he does with all of the horses in his care that are racing. He also explained that he withdrew the medication at approximately three and a half days before the horse was scheduled to race as is customary in his stable. He believed that given the levels of the medication in the post race sample that the horse somehow received the medication race day, but offered no evidence to support that conclusion. (Having heard cases in the past involving this medication, the clenbuterol levels discovered in this horse are not indicative of a race day administration. But given that there was no evidence presented at hearing other than Mr. Rodriguez's testimony that he administered the medication three and half days before the race, a race day administration argument is not relevant here). Mr. Rodriguez offered testimony with respect to why he did not request a split sample and dismay with what he perceived to be a poor understanding in the industry of appropriate withdrawal times for this medication. Unfortunately, he offered no evidence to support these conclusions, nor did he offer any evidence that would negate the evidence of a post race medication positive. Therefore, I find that the positive did occur and the analysis then must turn to an appropriate penalty. Fortunately, the CHRB rules and regulations provide direction in this endeavor.

CHRB rule 1843.3 (Penalties for Medication Violations) provides that a hearing officer must consider certain mitigating circumstances and aggravating factors when determining an appropriate penalty if a penalty is appropriate at all. It also provides minimum and maximum fines and suspensions for any given classification level violation. I will use this rule as a guideline at this juncture.

Mitigating circumstances and aggravating factors include:

(1) The past record of the licensee regarding medication violations: Mr. Rodriguez has three medication violations on his license history—a NSAID warning in 2008, a NSAID overage resulting in a $500 fine in March of 2010, and a lidocaine positive resulting in a 30 day suspension and $500 fine in August of 2010.

(2) The potential of the drug to influence the horse's racing performance: While clenbuterol is a bronchodilator and therefore has high potential to influence the horse's performance, there was no evidence to suggest that it was administered close enough to the race to have that effect.

(3) The legal availability of the drug: Clenbuterol is widely prescribed by veterinarians.

(4) Whether there is reason to believe the trainer intentionally administered the drug: Evidence showed that Mr. Rodriguez did administer the drug in a manner that he believed conformed with the rules.

(5) The steps taken by the trainer to safeguard the horse: Mr. Rodriguez testified that he alone administers the medications for his barn (he has no employees) and keeps them secured in his barn.

(6) This factor refers to steps taken by the owner and is not applicable here.

(7) This factor refers to environmental contamination and inadvertent exposure and is not applicable here.

(8) The purse of race: The purse in this race was $12,795 which has no significant import.

(9) Whether the drug found to be present in the official test sample was one for which the horse was receiving treatment: Testimony revealed that the horse was receiving clenbuterol as a regular treatment.

(10) Whether there was suspicious wagering pattern on the race: There was no evidence to suggest this occurred here.

(11) Whether the licensed trainer was acting under the advice of a licensed veterinarian: Evidence revealed or at least an inference could be fairly concluded that Respondent was acting at the direction of a veterinarian.

On balance most of this analysis would point in the direction of mitigating circumstances. The one potential for an aggravating factor is the lidocaine positive as outlined in (1) but this consideration is also made in rule 1843.3 in the Category "B" penalties when laying out the penalty guidelines for a trainer's second offense in a 365-day period. This guideline recommends a "minimum 60-day suspension absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum of a 180-day suspension. AND/OR Minimum fine of $1,000 absent mitigating circumstances. The presence of aggravating factors could be used to impose a maximum fine of $20,000." The CHRB requested a suspension of 60 days and the imposition of a fine of $3,000. Given all of the foregoing, I find this suggested penalty within the guidelines and facts of this matter, but marginally high when scrutinized closely. Therefore, I will recommend a fine and suspension somewhat less than requested.

CONCLUSION/PROPOSED DECISION

Given all of the foregoing, it is recommended that Miguel Rodriguez be suspended for a period of 45 days and fined $1,000 for violation of CHRB rules 1843 (Medication, Drugs and Other Substances) and 1844 (Authorized Medication) pursuant to CHB rule 1887 (Trainer to Insure Condition of Horse). The suspension should be begin on a date assigned by the California Horse Racing Board and the fine should be paid before the end of the recommended suspension.

DATED: April 8, 2011.

C. SCOTT CHANEY
Hearing Officer

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