

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

RAUL SOSA
CHRB License #281675
Respondent

CHRB Case #15LA0150

DECISION

The attached Revised 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 ten thousand dollar (\$10,000.00) 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

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint/Accusation
against:

RAUL SOSA,
Respondent

License Type: Owner
License No. 281675-08/2015

Case No. 15LA0150

REVISED PROPOSED DECISION

INTRODUCTION

This matter was heard on September 26, 2015 before the Board of Stewards, George Slender, Ruben Moreno, and James Dreyer, in the Los Alamitos Stewards' Office.

Present at the hearing was the Respondent, Raul Sosa, Stewards George Slender, Ruben Moreno, and James Dreyer, Supervising Investigator Tom Blake, Investigator Dennis Drulias, and Raul's son, Rodrigo Sosa. Court Reporter Michelle Derieg transcribed the proceedings.

PROCEDURAL BACKGROUND

Owner Raul Sosa was the groom of record for the horse "Dragon Dance," who started in the first race at Los Alamitos Race Course on July 10, 2015. On July 23, 2015, Sacramento Headquarters faxed information to Supervising Investigator Tom Blake at Los Alamitos Race Course that "Dragon Dance" (Urine Sample #LA31435) tested positive for the class III prohibited drug Clenbuterol after finishing first in the first race on July 10, 2015. Trainer Martinez was notified of the positive on July 23, 2015, and a barn inspection found no further violations. On July 24, 2015, Groom Sosa completed the forms for the split sample testing. Industrial Laboratory was selected as the lab to conduct the testing of the split sample. On August 27, 2015, investigators received a Final Report from Industrial Laboratories confirming that split sample #LA31435 contained the presence of Clenbuterol (157 pg/ml). The initial results from U.C. Davis showed the level to be 240 pg/ml. The Industrial Lab reading of 157 pg/ml, however, is still above the allowable 140 pg/ml.

LIST OF EXHIBITS

Complainant / State California Horse Racing Board Complaint #15LA0150

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 "groom/owner."

II.

Respondent was the trainer of record for the horse "Dragon Dance" when it raced in the first race on July 10, 2015 at Los Alamitos Race Course. "Dragon Dance" finished first in the aforementioned race.

III.

A post-race urine sample (labeled sample #LA31435) was taken from "Dragon Dance" 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 #LA31435 from "Dragon Dance" was uninterrupted.

V.

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

VI.

On July 23, 2015, Respondent was notified that "Dragon Dance" had tested positive for Clenbuterol.

VII.

The Respondent elected to have a split sample sent to Industrial Laboratories.

VIII.

On August 27, 2015, Investigator Tom Blake received confirmation from Industrial Labs that urine sample #LA31435 contained Clenbuterol.

APPLICABLE RULES

California Horse Racing Board Rule 1887 (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 (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 1843.1 (Prohibited Drug Substances)

For purposes of this division, prohibited drug substance means:

- (a) any drug, substance, medication or chemical foreign to the horse, whether natural or synthetic, or a metabolite or analog thereof, whose use is not expressly authorized in this article.
- (b) any drug, substance, medication or chemical authorized by this article in excess of the authorized level or other restrictions as set forth in this article.

California Horse Racing Board Rule 1844 (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:

- (a) No person shall administer a drug substance to any horse entered to race except upon authorization of the official veterinarian in conformance with these rules.
- (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.
- (c) Not more than one approved non-steroidal anti-inflammatory drug substance (NSAID) may be administered to a horse that is entered to race and shall be only one of the following authorized drug substances: (1) Phenylbutazone in a dosage amount that the test sample shall contain not more than 2 micrograms of the drug substance per milliliter of blood plasma or serum. (2) Flunixin in a dosage amount that the test sample shall contain not more than 20 nanograms of the drug substance per milliliter of blood plasma or serum. (3) Ketoprofen in a dosage amount that the test sample shall contain not more than 2 nanograms of the drug substance per milliliter of blood plasma or serum. (4) Metabolites or analogues of approved NSAIDs may be present in post race test samples.
- (d) If the official chemist reports that a blood test sample contains an authorized NSAID in excess of the limit for that drug substance under this rule, the official veterinarian shall, in conjunction with the veterinarian who administered or prescribed the authorized drug substance, establish a dosage amount or time of administration of the drug substance that will comply with the limits under this rule; or the official veterinarian may, if in his/her judgment no such reduced dosage amount or amendment to time of administration will result in a test sample level within the limits of this rule, withdraw authorization for the use of any one NSAID.
- (e) Official urine test samples may contain one of the following drug substances, their metabolites and analogs, in an amount that does not exceed the specified levels:
 - (1) Acepromazine; 10 nanograms per milliliter
 - (2) Mepivacaine; 10 nanograms per milliliter
 - (3) Albuterol; 1 nanograms per milliliter

- (4) Procaine; 25 nanograms per milliliter
- (5) Salicylates; 750 micrograms per milliliter
- (6) Clenbuterol; 140 picograms per milliliter, except in Quarter Horses the amount of clenbuterol cannot exceed 0 picograms per milliliter
- (7) Omeprazole; 1 nanogram per milliliter
- (8) Nandrolone; 1 nanograms per milliliter for geldings, fillies and mares; 45 nanograms for males other than geldings.
- (9) Boldenone; 15 nanograms per milliliter in males other than geldings.
- (10) Testosterone; 20 nanograms per milliliter in geldings.
 - (A) Testosterone at any level in males other than geldings is not a violation of this regulation.
- (11) Testosterone; 55 nanograms per milliliter in fillies or mares
- (12) Butorphanol 300 nanograms per milliliter

(f) Official blood test samples may contain the following drug substances, their metabolites and analogs, in an amount that does not exceed the specified levels in serum or plasma:

- (1) Bethamethasone; 10 picograms per milliliter

...

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.

ADDENDUM

DISCUSSION

On January 16th, 2016 Case # 15LA0150 was reconvened to review more closely owner Diana Lopez's involvement in the incident.

This matter was heard by the Board of Stewards Randy Winick, Tom Ward and James Dreyer. Present at the hearing was Supervising Investigator Tom Blake. The proceedings were recorded by court reporter Michelle Derieg.

Investigator Blake interviewed Miss Lopez on Jan. 8th, 2016 telephonically as she works seven days a week and stated she would be unable to attend the hearing. Her testimony is as follows. When asked who owned Dragon Dance she stated that she was the owner of the horse. Asked what Sosa's role was she testified he was the groom and took care of the horse. She said her only involvement with Dragon Dance was financial; she pays all the bills. She denied giving Dragon Dance the clenbuterol or having any knowledge of who may have given Dragon Dance the drug. Based on her testimony this tribunal feels she was unaware of what was going on and therefore holds her blameless. To clarify her relationship with Raul Sosa, she is his "significant other."

The investigators were unable to contact owner/groom Raul Sosa. His testimony however, was not critical to these proceedings. In his previous testimony Sosa accepted full responsibility for the purchase and administration of the clenbuterol to the horse Dragon Dance. Any reference to Sosa as owner/groom was due to the fact that he was in possession of both an owner's license and a groom's license. Based on statements by Diana Lopez this Board feels that in no way was he involved in the ownership of Dragon Dance. He is however the responsible individual for the administration of clenbuterol to the horse Dragon Dance.

DISCUSSION

It was explained to Owner Raul Sosa that, in addition to this hearing concerning the positive test for Clenbuterol, the Stewards would also disqualify the horse in question, "Dragon Dance," as all class I, II, and III medication violations are required to be disqualified under California Horse Racing Board Rule #1859.5 (Disqualification Upon Positive Test Finding). The disqualification was memorialized in Ruling #146 of the Los Alamitos Quarter Horse Racing Association, which also contained a provision for the purse redistribution of all monies earned by the connections of "Dragon Dance," the first place finisher in the first race at Los Alamitos Race Course on July 10, 2015. The owner of record, Diana Lopez, and Trainer Silverio Martinez requested a split sample.

Owner/groom Raul Sosa chose to represent himself in these proceedings.

Initially, when questioned by investigators, Sosa stated he had given "Dragon Dance" Clenbuterol. During the formal hearing, he testified he did not know what the clear liquid was that he had purchased from an unknown male at some match races. He stated that he was told by the unknown individual he could give the Clenbuterol until twenty-four days prior to racing the horse. That statement right there contradicts his testimony that he was unaware of what the clear liquid was.

No Clenbuterol was found in his tackrooms, and when questioned about it, he stated he had used it all and discarded the containers.

When Sosa questioned the difference in the levels between the original and the split, 240 pg/ml to 157 pg/ml, it was explained that test samples dissipate over time. Both levels, however, were over the allowable level of 140 pg/ml.

It should be noted that Raul Sosa has had no prior medication violations.

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 III violation with a class "B" penalty category, which calls for a minimum thirty (30) day suspension and a five hundred dollar (\$500.00) fine to a maximum sixty (60) day suspension and a ten thousand dollar (\$10,000) fine.

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:* Groom Raul Sosa has no medication violations. **Mitigating.**
- (2) *The Potential of the Drug to Influence a Horse's Performance:* Clenbuterol can enhance a horse's performance, however, at 157 pg/ml, it is very unlikely. **Neutral.**

- (3) *The Legal Availability of the Drug:* Clenbuterol is available from any veterinarian as it is not an illegal drug to use, just to race on. **Aggravating.**
- (4) *Whether There is Reason to Believe the Responsible Party Knew of the Administration of the Drug or Intentionally Administered the Drug:* By his own admission, Raul Sosa admitted to purchasing and administering the Clenbuterol to "Dragon Dance." There was no mistake on his part. **Aggravating.**
- (5) *Steps Taken by the Trainer to Safeguard the Horse:* Martinez was negligent by allowing Sosa to have complete authority regarding the care of "Dragon Dance." **Aggravating.**
- (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:* It appears that both Sosa and Lopez are the guilty parties here and did nothing to safeguard the horse until Trainer Martinez told them to remove the horses from his shedrow. **Aggravating.**
- (7) *Probability of Environmental Contamination or Inadvertent Exposure Due to Human Drug Use or Other Factors:* This is a **neutral** factor as there is no evidence of such.
- (8) *Purse of the Race:* The purse of the race was \$8,500, rather small, and is therefore **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):* Groom Sosa admitted to administering the drug. It was not prescribed by any veterinarian. **Aggravating.**
- (10) *Whether there was any Suspicious Wagering Pattern on the Race:* There was no evidence of any unusual wagering pattern. **Mitigating.**
- (11) *Whether the Licensed Groom was Acting under the Advice of a Licensed Veterinarian:* By his own admission, Sosa was not acting on the advice of any veterinarian. **Aggravating.**

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

CONCLUSION

Following a formal hearing, this Board of Stewards concludes the class III prohibited drug Clenbuterol was found in urine sample #LA31435 taken from the horse "Dragon Dance," the first place finisher in the first race at Los Alamitos Race Course on July 10, 2015. This finding requires the disqualification of "Dragon Dance" in accordance with California Horse Racing Board Rule #1859.5 (Disqualification Upon Positive Test Finding).

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 Raul Sosa, who started the horse "Dragon Dance" in the first race on July 10, 2015 at Los Alamitos Race Course, is fined ten thousand dollars (\$10,000.00)* and suspended sixty (60) days 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 – Clenbuterol - Class III), #1843.1 (Prohibited Drug Substances), #1844 (e)(6) (Authorized Medication) and #1902 (Conduct Detrimental to Horse Racing).

During the term of suspension, all licenses and license privileges of Raul Sosa are suspended and pursuant to California Horse Racing Board Rule #1528 (Jurisdiction of Stewards to Suspend or Fine), Raul Sosa 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# 281675-08/2015

Case# 15LA0150

Dated 1/22/16 by this Board of Stewards:

James Dreyer
Steward James Dreyer

Randy Winick R.M.
Steward Randy Winick

Tom Ward
Steward Tom Ward

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