

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

TERRY MARK JOHNSON
CHRB License #215099
Respondent

CHRB Case #14GG0094

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 hundred dollar (\$500.00) fine and setting the fifteen (15) days of suspension.

IT IS SO ORDERED ON December 19, 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

Pacific Racing Association
Golden Gate Fields

DATED NOVEMBER 15, 2014

IN THE MATTER OF:

California Horse Racing Board

Vs.

Trainer Terry Mark Johnson

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CASE # 14GG0094

INTRODUCTION

This matter came for hearing at Golden Gate Fields race track in Albany, California on November 7, 2014 before a Board of Stewards consisting of Mr. John Herbuveaux, Mr. Darrel McHargue and Mr. Dennis Nevin.

Present at the hearing were the Respondent, Mr. Terry Johnson (hereinafter Respondent or Johnson) and California Horse Racing Board investigator Mr. Louis Quezada who presented the case on behalf of the California Horse Racing Board. Also present was Charles Dougherty Jr. of the California Thoroughbred Trainers organization and Terra Johnson, Respondent's daughter who testified on his behalf. The proceedings were recorded by Christine Niccoli, C.S.R.

Respondent was advised of his right to be represented by counsel. Johnson waived that right and stated he was prepared to go forward without counsel.

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

BACKGROUND

The Respondent was charged in complaint #14GG0094, filed by Investigator Louis Quezada (hereinafter Quezada), on behalf of the California Horse Racing Board (hereinafter CHRB or Board), with alleged violations of CHRB rules #1843 (a) (b) & (d) (Medication, Drugs and Other Substances), #1843.1 (a) (Prohibited Drug Substances), and #1887 (a) (Trainer to Insure Condition of Horse) of the California Code of Regulations, Title 4, Division 4.

The complaint states, in part:

"The official urine sample #GG19884 taken on August 23, 2014 at Golden Gate Fields was reported to contain Gabapentin (Neurotin). This sample was obtained from the horse "Giannonatti" which ran in the 8th race on (sic) Golden Gate Fields finishing 3rd. The trainer of record is Terry Mark Johnson."

At the commencement of the hearing Quezada requested that the complaint be amended to include CHRB rule #1859.5 (Disqualification Upon Positive Test Finding). Quezada stated that the owner of Giannonatti, Laurie Johnson, Respondent's wife, was notified of today's hearing and chose not to attend. Respondent confirmed Quezada's statement. With the inclusion of rule #1859.5 the Stewards would be able to consider the disqualification of Giannonatti at the conclusion of the proceedings if it were determined that the horse did in fact have a prohibited substance in its system during the running of the race in question. Respondent had no objection to the inclusion of rule #1859.5.

EXHIBITS

CHRB EXHIBITS:

- 1 Amended Complaint #14GG0094
- 2 Questions for Licensees Not Represented By Counsel at a Hearing Before the Board of Stewards.

FINDINGS OF FACT

I

At all relevant times herein Johnson was licensed as a trainer by the CHRB.

II

Johnson was the trainer of record for the horse Giannonatti, the third place finisher in the eighth race at Golden Gate Fields on August 23, 2014.

III

Laurie Johnson was the owner of record for the horse Giannonatti when the horse ran in the eighth race at Golden Gate Fields on August 23, 2014.

IV

Following the running of the eighth race Giannonatti was taken to the Receiving Barn at Golden Gate Fields and urine sample #GG19884 was collected from the horse.

V

Test sample #GG19884 was sent to the Equine Analytical Chemistry Laboratory at the University of California, Davis, the official testing laboratory for the CHRB.

VI

Results of the tests conducted on sample #GG19884 showed the presence of the prohibited drug substance Gabapentin.

VII

On September 4, 2014 Dr. Scott Stanley, Chief Chemist for the laboratory facility at the University of California, Davis, notified the CHRB that the test results on sample #GG19884 showed the presence of the prohibited substance Gabapentin.

VIII

On September 5, 2014 CHRB Headquarters in Sacramento notified Investigator Louis Quezada of the test results on sample #GG19884 and the investigation which led to the filing of the instant complaint commenced. The CHRB classified Gabapentin as a class 3 prohibited substance with a class B penalty.

IX

Quezada stated that during the investigative process Johnson has been forthright and cooperative.

X

Neither Respondent, nor the owner Laurie Johnson, availed themselves of the opportunity to have the split of sample #GG19884 tested by another laboratory.

XI

Respondent did not contest the chain of custody for sample #GG19884.

XII

Respondent did not contest the test results reported by the Equine Analytical Chemistry Laboratory at the University of California at Davis which showed the presence of Gabapentin in sample #GG19884.

XIII

At the beginning of the investigative process Johnson stated to Quezada that he personally has a prescription for Gabapentin and that he takes the medication for back pain.

XIV

Respondent produced evidence to Quezada that he does indeed have a prescription for Gabapentin.

XV

Johnson originally opined that the Gabapentin may have been introduced to Giannonatti by himself because he, Johnson, has diabetes which causes him to frequently urinate in his horses' stalls and Giannonatti may have eaten hay contaminated by Respondent's urine.

XVI

At the hearing Johnson testified that just prior to the race on August 23, 2014 he shod Giannonatti in the horse's stall and on that occasion he had a half a tablet of Gabapentin in his shirt pocket. At the end of the shoeing process the half tablet of Gabapentin was no longer in his pocket.

XVII

Respondent testified that he and his daughter, Terra, looked in Giannonatti's stall for the missing tablet but did not find it. Terra Johnson's testimony corroborated Respondent's.

XVIII

It is Respondent's contention that the missing half tablet lost in Giannonatti's stall was eaten by the horse which then caused the positive test finding.

XIX

Johnson believes this must be the cause of the test results because he also takes other medications and if his urinating in the Giannonatti's stall was the cause then the other medications would have shown up in the test results

XX

Johnson's licensing history with the CHRB shows that he has been licensed as a trainer since 1990 and that he has never had a medication violation in all that time.

XXI

Johnson testified that he was licensed by the CHRB before 1990 but that the computer records don't go back that far and that he has never had any type of medication violation, not even a minor one.

XXII

At the close of the hearing Quezada stated that the Board was seeking the minimum penalty for the medication violation.

CALIFORNIA HORSE RACING BOARD RULES
California Code of Regulations, Title 4, Division 4

California Horse Racing Board rules that are pertinent to this matter:

1843 (a)(b) & (d) MEDICATION, DRUGS AND OTHER SUBSTANCES.

#1843.1 PROHIBITED DRUG SUBSTANCES

1859.5 DISQUALIFICATION UPON POSITIVE TEST FINDING

#1887 (a) TRAINER TO INSURE CONDITION OF HORSE.

DISCUSSION

There was no evidence or testimony presented which disputed the findings of the official CHRB laboratory at UC Davis that test sample #GG19884 contained the prohibited substance Gabapentin. In fact, Johnson testified that he did not dispute either the chain of custody or the test results from the Maddy laboratory. As a result the Stewards determined there was evidence of a Class 3 prohibited drug substance in urine sample #GG19884 and disqualified Giannonatti from the eighth race at Golden Gate Fields, redistributed the purse and ordered the owner, trainer and jockey to return all monies received. This was accomplished in Pacific Racing Association ruling #14, dated November 8, 2014.

Johnson did not offer a defense for the positive test finding only an explanation and a request for leniency. Before the Stewards can arrive at a penalty for the finding of a Class 3 prohibited drug substance CHRB rule #1843.3 (Penalties for Medication Violations) requires that mitigating circumstances and aggravating factors must be considered.

Aggravating Factors:

1. There is a potential for the substance to influence a horse's performance because Gabapentin is used as a pain reliever in humans.
2. The drug is available for use in human's but is not intended for use in horses.
3. Having the Gabapentin around the barn and urinating in a horse's stall are detrimental to safeguarding the horse from accidental contamination.

Mitigating Circumstances:

1. Respondent's past record is without any medication violation which is very unusual and highly commendable.
2. Johnson did not intend for the substance to be administered to the horse and, according to his testimony the horse ingested the medication by accident.
3. There was no testimony that a strange wagering pattern detected.
4. The purse of the race, \$12,000.00, is not indicative of foul play.
5. It appears the substance may have been ingested by accidental contamination.

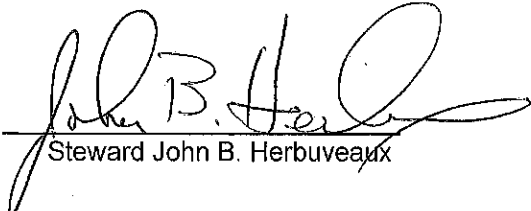
Rule #1843.3 goes on to state in pertinent part that minimum penalty for a first time Class 3 medication violation for a trainer is a thirty (30) day suspension absent mitigating circumstances and/or a minimum fine of Five Hundred Dollars (\$500.00) absent mitigating circumstances. The Board's recommendation regarding the penalty was the minimum.

Considering the above the Stewards recommend that Johnson be suspended Fifteen (15) Days and fined the sum of Five Hundred Dollars (\$500.00).

PROPOSED DECISION

Trainer Terry Mark Johnson who started the horse Giannonatti, third place finisher in the eighth race at Golden Gate Fields on August 23, 2014, is hereby suspended Fifteen (15) Days and fined the sum of Five Hundred Dollars (\$500.00) pursuant to CHRB rule #1887 (Trainer To Insure Condition of Horse) for violation of CHRB rule #1843 (a) (b) & (d) (Medication Drugs and Other Substances: A prohibited drug substance – Gabapentin [Class 3])

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Steward John B. Herbeveaux


Steward Dennis Nevitt


Steward Darrel McHargue

Dated: November 15, 2014