

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

**In the Matter of the Complaint
Against:**

**TRAINER FRANCISCO VALLEJO
CHRB License No. 284923
Respondent**

Case No. SAC 17-0062

**DECISION AFTER
NON-ADOPTION OF PROPOSED DECISION**

This Matter was originally heard by the Board of Stewards, Los Alamitos Quarter Horse Racing Association, on September 1, 2017, as Case No. 17LA0191. On September 24, 2017, the Board of Stewards issued a Proposed Decision which suspended Licensee Francisco Vallejo for thirty (30) days and fined him the sum of one thousand five hundred (\$1,500.00) dollars for violation of California Horse Racing Board (CHRB) Rule No. 1887 (a), Trainer to Insure Condition of Horse, and CHRB Rule No. 1859.5, Disqualification Upon Positive Test, for violation of CHRB Rule No. 1843 (a), (b) and (d), Medication, Drugs and Other Substances: Clenbuterol – Class III, CHRB Rule No. 1843.1 (a), Prohibited Drug Substances, and CHRB Rule No. 1844 (e)(6), Authorized Medication.

By Notice of Decision Not to Adopt Proposed Decision and Order Directing Preparation of the Record, dated November 20, 2017, the California Horse Racing Board rejected the Proposed Decision and elected to decide the Matter itself on a review of the record, including the transcript, under the provisions of Government Code section 11517, subdivision (c)(2)(E). The Licensee Vallejo was notified of the Decision to Non-adopt the Proposed Decision, via registered mail, on November 25, 2017. On January 3, 2018, Licensee Vallejo was notified, via registered mail, the administrative record, including the transcript, was available for receipt.

Licensee Vallejo declined to submit any additional materials for the California Horse Racing Board to consider prior to rendering the Decision and Order After Non-Adoption of Proposed Decision.

The California Horse Racing Board has reviewed the Matter on the record

and issues its Decision in the Matter as follows:

The Proposed Decision is hereby adopted as to all factual findings as set forth in the September 24, 2017 Proposed Decision, to wit; Licensee Vallejo violated CHRB Rule No. 1887 (a), Trainer to Insure Condition of Horse, violated CHRB Rule No. 1843 (a), (b) and (d), Medication, Drugs and Other Substances: Clenbuterol – Class III, violated CHRB Rule No. 1843.1 (a), Prohibited Drug Substances, and CHRB Rule No. 1844 (e)(6), Authorized Medication, and violated CHRB Rule No. 1843 (a) and (d), due to the presence of Clenbuterol in the horse “Winger” who started in the 4th race at the Los Alamitos Race Course on May 27, 2017.

The attached Proposed Decision of the Board of Stewards is hereby modified to reflect that the Licensee Francisco Vallejo is suspended for forty-five (45) days and fined the sum of three thousand (\$3,000.00) dollars. The actual days of suspension and payment of the fine are to be set by the Board of Stewards.

IT IS SO ORDERED ON February 28, 2018.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman



By: Rick Baedeker
Executive Director

State of California

CALIFORNIA HORSE RACING BOARD

**PROPOSED DECISION
of the
BOARD OF STEWARDS**

Los Alamitos Race Course

Date: September 1, 2017

In the Matter of the Complaint Against:

Name

Respondent: Francisco Vallejo

Case# 17LA0191

INTRODUCTION

This matter was heard before the Board of Stewards, Ronald Church, Tom Ward, and James Dreyer, in the Los Alamitos Stewards' Office September 1, 2017.

Present at the hearing was the Respondent, Francisco Vallejo, owners Carmen Jimenez and Sergio Lopez, Sergio Garcia translating for them, Investigator Kevin Kitashima presenting the case and the Board of Stewards. Court Reporter Michelle Derieg transcribed the proceedings.

PROCEDURAL BACKGROUND

Trainer Francisco Vallejo was the trainer of record for the horse "Winger," who started in the 4th race at Los Alamitos Race Course on May 27, 2017. On June 15, 2017, Sacramento Headquarters emailed information to Supervising Investigator Tom Blake at Los Alamitos Race Course that "Winger" (Urine Sample #LA37199) tested positive for the class III prohibited drug Clenbuterol after finishing 2nd in the 4th race on May 27, 2017. Trainer Vallejo was notified of the positive on June 15, 2017, and a barn inspection found no further violations.

LIST OF EXHIBITS

Complainant / State Exhibits #1, #2, #3 California Horse Racing Board Complaint
#17LA0191

Exhibit #4 Agreement between defendants, U.C. Davis
and the California Horse Racing Board.

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 "Winger" when it raced in the 4th race on May 27, 2017 at Los Alamitos Race Course. "Winger" finished 2nd in the aforementioned race.

III.

A post-race urine sample (labeled sample #LA37199) was taken from "Winger" 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 #LA37199 from "Winger" 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 June 15, 2017, Respondent was notified.

VII.

The respondent elected not to have a split sample tested.

APPLICABLE RULES

CHRB rule violations listed in the complaint

- Rule 1887 (a) (Trainer to Insure Condition of Horse)
- Rule 1843 (a, b & d) (Medication, Drugs and Other Substances)
- Rule 1843.1 (b) (Prohibited Drug Substances)
- Rule 1844 (e)6 (Authorized Medication)
- Rule 1859.5 (Disqualification Upon Positive Test Finding)

DISCUSSION

Complaint #17LA0190 scheduled to be heard on 7/21/17 was continued until 9/1/17 to allow the owner the opportunity to have a DNA test done on a hair follicle sample he had pulled on "Winger" to see if it matched urine sample #17LA37199 taken from "Winger" following the race in question. Unfortunately there was an insufficient amount of the split sample remaining to verify if the hair and urine were or were not a match. The owner declined to exercise his option to test the hair follicles against the blood test. The hair follicle test was negative for Clenbuterol. When Dr. Arthur was consulted about the discrepancy in the two tests he explained that if this had been an isolated incident and "Winger" had received two or even three injections it is unlikely it would register in a hair follicle test. This is a plausible scenario for two reasons. The first being there was speculation that "Winger" had been taken to the match races prior to his last race and, secondly he was tested in both of his previous races and was negative for Clenbuterol. Blood and urine are the only test the Board recognizes when testing for drugs therefore the hair follicle test will carry no weight when this Board of Stewards submits its proposed decision.

This appears to be another textbook example of program training. Mr. Vallejo allowed "Winger" to be stabled and trained off racetrack property with total disregard for what the consequences might be when the horse was shipped back into him to race. In fact, if trainer Vallejo's everyday on track operation were researched you would probably discover that most of the day to day decisions concerning his barns operation are made by his daughter trainer Adriana Aceves.

In trainer Vallejo's interview he stated that he does not use Clenbuterol in his barn. This Board of Stewards is of the opinion that he was telling the truth. Sergio Lopez also stated in his interview that there is no Clenbuterol on his ranch where the horse was in training. Lopez also testified that "Winger" had been taken to Hesperia to work by an acquaintance of his named Victor. There is match racing at the venue and felt that Victor may have matched the horse and that's where he may have received the Clenbuterol. The horse was taken to Hesperia seven to ten days prior to being shipped to Los Alamitos Race Course.

This Board of Stewards is of the opinion that Mr. Vallejo did not administer the Clenbuterol to "Winger", however he must be held accountable for his irresponsible conduct.

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.

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

- (1) *Past Medication Record of the Licensee*: Trainer Francisco Vallejo has had no Class I, II, or III medication violations. He has had a Trainer License since 2005. Mitigating.
- (2) *The Potential of the Drug to Influence a Horse's Performance*: Clenbuterol can enhance a horse's performance. Aggravating.
- (3) *The Legal Availability of the Drug*: Clenbuterol is available from any veterinarian, however, in Quarter Horses it is a zero tolerance drug. Aggravating
- (4) *Whether There is Reason to Believe the Responsible Party Knew of the Administration of the Drug or Intentionally Administered the Drug*: "Winger" was shipped to trainer Vallejo at Los Alamitos on May 26, 2017, the day prior to the race. He was shipped back to the Oro Grande, Ca ranch of Sergio Lopez on May 28, 2017. Sergio Lopez is the husband of Carmen Jimenez the registered owner of "Winger". Given these facts it is reasonable to believe that Vallejo did not administer nor was he aware that the horse had been administered Clenbuterol. The horse as only in his possession for approximately two days. This is an aggravating factor, due to Mr. Vallejo's acceptance of a "ship in" horse.
- (5) *Steps Taken by the Owner to Safeguard the Horse*: This is a neutral factor as Vallejo did not have constant control of the horse. "Winger" was shipped to him the day before the race.
- (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 is 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 as there is no evidence of such.
- (8) *Purse of the Race*: The purse was \$11,065 which is not excessive and 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)*: Veterinary reports do not indicate the horse having been prescribed Clenbuterol. Aggravating
- (10) *Whether there was any Suspicious Wagering Pattern on the Race*: Mitigating as there was no evidence of any unusual wagering pattern.
- (11) *Whether the Licensed trainer was Acting under the Advice of a Licensed Veterinarian*: There is no evidence of any veterinarians advice for approval of this

drug to be administered to "Winger". Aggravating.

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

CONCLUSION

Following a formal hearing, this Board of Stewards concludes the class III prohibited drug Clenbuterol was found in urine sample #LA37199 taken from the horse "Winger," the 2nd place finisher in the 4th race at Los Alamitos Race Course on May 27, 2017. This finding requires the disqualification of "Winger" 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

* * *

TRAINER FRANCISCO VALLEJO WHO STARTED "WINGER" IN THE FOURTH RACE ON MAY 27, 2017 AT LOS ALAMITOS RACE COURSE IS FINE ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00)* AND SUSPENDED THIRTY (30) DAYS PURSUANT TO CALIFORNIA HORSE RACING BOARD RULE #1887(A) AND RULE #1859.5(DISQUALIFICATION UPON POSITIVE TEST) FOR VIOLATION OF CALIFORNIA HORSE RACING BOARD RULES #1843(A)(B) AND (D)(MEDICATION, DRUGS, AND OTHER SUBSTANCES) (CLENBUTEROL – CLASS III), #1843(1)(B)(PROHIBITED DRUG SUBSTANCES), AND #1844(E)(6)(AUTHORIZED MEDICATION).

DURING THE TERM OF SUSPENSION ALL LICENSES AND LICENSE PRIVILEGES OF FRANCISCO VALLEJO ARE SUSPENDED AND PURSUANT TO CALIFORNIA HORSE RACING BOARD RULE #1528(JURISDICTION OF STEWARDS TO SUSPEND OR FINE) FRANCISO VALLEJO IS DENIED ACCESS TO ALL 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# 284923 – 11/2019

Case# 17LA0191

PROPOSED DECISION

Given all of the foregoing, this Board of Stewards makes the following recommendation in this matter:

Dated September 24, 2017 by this Board of Stewards:

James Dreyer
Steward James Dreyer

Ron Church
Steward Ronald Church

Tom Ward
Steward Tom Ward

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