

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

VALENTIN A. ZAMUDIO
CHRB License #305492

Respondent

CHRB Case #13LA0226

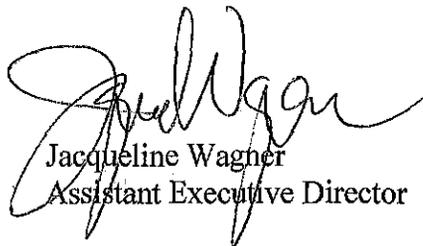
DECISION

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 January 16, 2014.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman


Jacqueline Wagner
Assistant Executive Director

State of California

CALIFORNIA HORSE RACING BOARD

**PROPOSED DECISION
of the
BOARD OF STEWARDS**

Los Alamitos Race Course

December 27, 2013

In the Matter of the Complaint Against:

Valentin A. Zamudio
Respondent
Case #13LA0226

INTRODUCTION

This matter has been heard before the Board of Stewards, George Slender, Ruben Moreno, and James Dreyer in the Los Alamitos Stewards' Office on Saturday, December 7, 2013.

Present at the hearing was the respondent, Trainer Valentin Zamudio, his wife Irma, Senior Investigator Tom Blake, Investigator Kevin Kitashima, Safety Steward Tom McCarthy, and Stewards George Slender, Ruben Moreno, and James Dreyer. Court Reporter Michelle Derieg recorded the proceedings.

PROCEDURAL BACKGROUND

Trainer Valentin Zamudio was the trainer of record for the horse "Mr TR Dasher," who started in the third race at Los Alamitos Race Course on September 22, 2013. On October 4, 2013, Sacramento Headquarters faxed information to Supervising Investigator Tom Blake at Los Alamitos Race Course that "Mr TR Dasher" (Urine Sample #LA24262) tested positive for the class III prohibited drug Clenbuterol after finishing second in the third race on September 22, 2013. Trainer Zamudio was notified of the positive on October 4, 2013, and a barn inspection found no further violations. On October 4, 2013, Trainer Zamudio completed the forms for the split sample testing. Pennsylvania Equine Toxicology and Research Laboratory was selected as the lab to conduct the testing of the split sample. On October 24, 2013, the Pennsylvania Equine Toxicology and Research Laboratory faxed information to the California Horse Racing Board confirming the presence of Clenbuterol, a class III prohibited drug in urine sample #LA24262.

LIST OF EXHIBITS

Complainant / State

California Horse Racing Board Complaint
#13LA0226

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 "Mr TR Dasher" when it raced in the third race on September 22, 2013 at Los Alamitos Race Course. "Mr TR Dasher" finished second in the aforementioned race.

III.

A post-race urine sample (labeled sample #LA24262) was taken from "Mr TR Dasher" 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 #LA24262 from "Mr TR Dasher" was uninterrupted.

V.

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

VI.

On October 4, 2013, Trainer Valentin Zamudio and Owner Santos Montemayor were notified that "Mr TR Dasher" had tested positive for Clenbuterol.

VII.

On October 10, 2013, Pennsylvania Equine Toxicology and Research Laboratory received split urine sample #LA24262.

VIII.

On October 24, 2013, Investigator Kitashima received a final report confirmation from Pennsylvania Equine Toxicology and Research Laboratory that urine sample #LA24262 was received in acceptable cold condition, and the sample container was sealed. Chemical analysis of the urine sample was completed, and the sample 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 (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.

DISCUSSION

As the factual findings indicate, the Respondent trained a horse that tested positive for a drug substance, Clenbuterol, the presence of which is prohibited by California Horse Racing Board Rules and Regulations. The split sample the Respondent sent to Pennsylvania Equine Toxicology and Research Laboratory also tested positive for Clenbuterol.

There is no dispute about the positive test findings by either the trainer of record or the owner. With the first issue in this case not disputed of the actual drug positive by Trainer Zamudio, 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 along with 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. Zamudio's culpability. Trainer Zamudio 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 does not apply.

Throughout the investigation and hearing, Mr. Zamudio cooperated completely.

The inquiry now goes to the penalty phase as outlined in California Horse Racing Board Rule #1843.3 (Penalties for Medication Violations), which differentiates 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 "B" penalty, which calls for a minimum thirty day suspension absent mitigating circumstances.

A review of Mr. Zamudio's medication violation history reveals that he has had one high "Bute" and one previous Clenbuterol positive. 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 two violations on his entire past history. We consider this somewhat **mitigating**.
- (2) *The Potential of the Drug to Influence a Horse's Performance:* Clenbuterol can enhance a horse's performance, however, at the minute level of 622 picograms/ml, it is highly unlikely. **Mitigating**.
- (3) *The Legal Availability of the Drug:* Clenbuterol is easily available from any veterinarian as this is not an illegal drug to use, just to race on. This is a **neutral** factor.

- (4) *Whether There is Reason to Believe the Responsible Party Knew of the Administration of the Drug or Intentionally Administered the Drug:* Upon reviewing the testimony by Trainer Zamudio, it is our opinion that he did not intentionally administer Clenbuterol to "Mr TR Dasher." Trainer Zamudio testified that he has only trained for Mr. Montemayor for approximately one month. Owner Montemayor admitted that he instructed his employee, Genaro Sanchez, to administer Clenbuterol to "Mr TR Dasher" to treat a pulmonary problem the horse had. In our opinion, this is a strong **mitigating** factor.
- (5) *Steps Taken by the Trainer to Safeguard the Horse:* This is a **neutral** factor as the horse was not shipped to Zamudio until twenty-four hours prior to race time.
- (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 rather small: \$8,295.
- (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**; this horse was not prescribed Clenbuterol.
- (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.

It is the opinion of this tribunal that Trainer Zamudio is guilty of extremely poor judgment rather than of any malicious intent. It was a very poor decision to allow the owner to ship the horse to him so close to race time.

CONCLUSION

Following a formal hearing, this Board of Stewards concludes the class III prohibited drug substance (Clenbuterol) was found in urine sample #LA24262 taken from the horse "Mr TR Dasher," the second place finisher in the third race at Los Alamitos Race Course on September 22, 2013. This finding requires the disqualification of "Mr TR Dasher" 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 Valentin Zamudio. To avoid such responsibility, Mr. Zamudio 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). 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 Valentin Zamudio, who started the horse "Mr TR Dasher" in the third race on September 22, 2013 at Los Alamitos Race Course, is suspended sixty (60) days and fined the sum of three thousand dollars (\$3,000.00)* 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 Rule #1843 (a)(b) & (d) (Medication, Drugs and Other Substances – Prohibited Substance – Clenbuterol – Class III – Second Offense within Two Years).

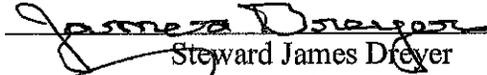
During the term of suspension, all licenses and license privileges of Trainer Valentin Zamudio are suspended and pursuant to California Horse Racing Board Rule #1528 (Jurisdiction of Stewards), subject is denied access to premises in this jurisdiction.

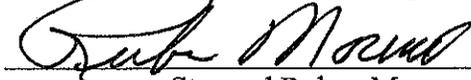
*California Horse Racing Board Rule #1532 states that all fines shall be paid to the paymaster of purses within seven (7) days of imposition [-----] or the license of the person upon whom the fine was imposed shall be suspended.

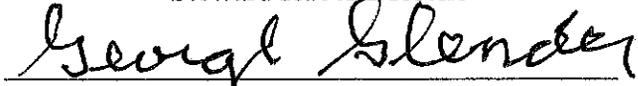
Lic# 305492-10/2013

Cases# 13LA0226

Dated ~~12/27/13~~ by this Board of Stewards:


Steward James Dreyer


Steward Ruben Moreno


Steward George Slender