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CHRB ADVISORY

MAY 26, 2012

The California Horse Racing Board has received numerous requests to explain why the Board on May 24, in advance of the Belmont Stakes on June 9, acted on the recommendation of the Hearing Officer in the matter involving trainer Doug O'Neill. The following is a chronology of events that led to the Board decision, which follows at the end of this statement:

- The horse Argenta, trained by Doug O'Neill, competed in the sixth race at Del Mar on August 25, 2010, finishing eighth.
- Shortly thereafter, the Kenneth Maddy Laboratory at UC Davis reported that Argenta's total carbon dioxide (TCO₂) level at the time of the race was 39.4mmol/l, exceeding the regulatory threshold of 37.0mmol/l for TCO₂, a Class 3 violation. Under CHRB Rule 1887, the trainer is held to be ultimately responsible for the condition of the horse.
- In a continuing series of administrative and legal actions, O'Neill filed a federal lawsuit and asked the court to enjoin CHRB from taking any action against him pending a resolution of his federal court action, which was dismissed April 18, 2011, by the district court.
- The case was referred to independent Hearing Officer Steffan Imhoff, who conducted a hearing at Del Mar Race Track involving seven days of testimony in the months of August, September and October of 2011, with final briefings received by Imhoff in March, 2012.
- Hearing Officer Imhoff wrote his recommended decision and signed it April 30, 2012 (in advance of the Kentucky Derby). The CHRB received the document on May 2, 2012. Following the success of O'Neill in the Kentucky Derby, the CHRB received a request from the news media for a copy of the case file pursuant to the Public Records Act. And then after the Preakness, the Board received similar requests from other news outlets. Under the law, the Hearing Officer's decision becomes a public document 30 days after it is received, in this case, as of June 2, 2012.
- The CHRB essentially had two options. The Board could decide the matter in executive session on May 24 or the racing commissioners could delay action until the executive session on June 28, 2012. If action was delayed, the recommendation of the hearing officer and the full 24-page opinion nonetheless would be released no later than June 2, leaving everyone to analyze the findings and speculate about what action the CHRB might take. Additionally, there already was a high level of speculation about whether O'Neill had intentionally violated CHRB rules.

- Therefore, the racing commissioners meeting in executive session on May 24 decided the most prudent approach would be to make and announce its decision, including the findings of the Hearing Officer that there was no "milkshaking" and that O'Neill had not committed any intentional acts. Nonetheless, the Board concurred with the Hearing Officer that pursuant to the trainer insurer rule, O'Neill was ultimately responsible for the condition of the horse and accountable for the rule violation.
- At the conclusion of the May 24 executive session, the Board issued the following news release indicating it had concurred with the recommendation of the Hearing Officer:

CHRB DECISION ON O'NEILL CASE

INGLEWOOD, CA – The California Horse Racing Board met in closed session Thursday to consider the recommended decision of the Hearing Officer in the case involving Doug O'Neill, the trainer of Argenta, a filly that finished eighth in the sixth race at Del Mar on August 25, 2010. The Maddy Laboratory at UC Davis reported that a sample taken from Argenta exceeded the regulatory threshold of 37.0mm/l for total carbon dioxide (TCO₂), a Class 3 violation.

The Hearing Officer, who conducted a 7-day hearing, agreed with O'Neill that the evidence demonstrated that Argenta had not been milkshaked, so milkshaking was not the cause of the TCO₂ overage. He also determined there were no suspicious betting patterns in the race. He further determined there was no evidence of any intentional acts on the part of O'Neill in connection with this incident.

However, prior to the hearing, the parties had stipulated that the Maddy laboratory detected an overage of TCO₂ in the sample, and CHRB Rule 1887 holds the trainer to be the absolute insurer of the condition of the horse.

Furthermore, The Jockey Club has publicly stated that "trainers should be advised that the elevated TCO₂ values, regardless of causation, are violations of the rules and those penalties for excessive TCO₂ values are severe. Therefore, trainers and their veterinarians should work closely to identify any procedure or practices that may elevate the TCO₂ values."

The Hearing Officer found that under the trainer insurer rule, while also taking into consideration the mitigating factors, that O'Neill should be suspended for a period of 45 days, with an additional 135 days of suspension stayed for 18 months, provided O'Neill commits no further Class 1, 2, or 3 violations, regardless of jurisdiction. The hearing officer also recommended a \$15,000 fine.

The Board concurred with this recommendation. CHRB Executive Director Kirk Breed will determine when the 45 days of suspension will begin, but in any event no sooner than July 1, 2012.

- The CHRB will post the Hearing Officer's recommended decision on the CHRB Website once it becomes a public document.

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