

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

JOSE MARIA GONZALEZ
CHRB License #267948
Respondent

CHRB Case #15LA0149

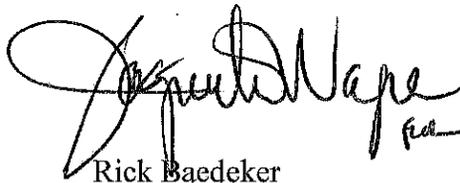
DECISION

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 ten thousand dollar (\$10,000.00) fine and setting the sixty (60) days of suspension.

IT IS SO ORDERED ON October 22, 2015.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman

A handwritten signature in black ink, appearing to read "Rick Baedeker". The signature is stylized and cursive, with a small "RB" monogram at the end.

Rick Baedeker
Executive Director

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint/Accusation
against:

JOSE MARIA GONZALEZ,
Respondent

License Type: Owner
License No. 267948-07/2016

Case No. 15LA0149

PROPOSED DECISION

INTRODUCTION

This matter was heard on September 18, 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, Owner Jose Maria Gonzalez, Stewards George Slender, Ruben Moreno, and James Dreyer, Supervising Investigator Tom Blake, and Investigator Kevin Kitashima. Court Reporter Michelle Derieg transcribed the proceedings.

PROCEDURAL BACKGROUND

Owner Jose Maria Gonzalez was the owner of record for the horse "Pink Berreta," who started in the third race at Los Alamitos Race Course on July 12, 2015. On July 23, 2015, Sacramento Headquarters emailed information to Supervising Investigator Tom Blake at Los Alamitos Race Course that "Pink Berreta" (Urine Sample #LA31471) tested positive for the class III prohibited drug Boldenone after finishing first in the third race on July 12, 2015. Owner Gonzalez was notified of the positive on July 24, 2015. On July 25, 2015, Owner Jose M. Gonzalez completed the forms for the split sample testing. Industrial Labs was selected as the lab to conduct the testing of the split sample. The initial choice, University of Florida Racing Lab, declined to test the sample. On August 27, 2015, investigators received a Final Report from Industrial Laboratories confirming that split sample #LA31471 contained the presence of Boldenone (26.5 ng/ml).

LIST OF EXHIBITS

Complainant / State

California Horse Racing Board Complaint #15LA0149

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 "owner."

II.

Respondent was the owner of record for the horse "Pink Berreta" when it raced in the third race on July 12, 2015 at Los Alamitos Race Course. "Pink Berreta" finished first in the aforementioned race.

III.

A post-race urine sample (labeled sample #LA31471) was taken from "Pink Berreta" 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 #LA31471 from "Pink Berreta" was uninterrupted.

V.

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

VI.

On July 24, 2015, Respondent was notified that "Pink Berreta" had tested positive for Boldenone.

VII.

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

VIII.

On August 27, 2015, Investigator Tom Blake received confirmation from Industrial Labs that urine sample #LA31471 contained Boldenone.

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 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.

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

It was explained to Owner Jose Gonzalez that, in addition to this hearing concerning the positive test for Boldenone (Equipose), the Stewards would also disqualify the horse in question, "Pink Berreta," 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 #147 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 "Pink Berreta," the first place finisher in the third race at Los Alamitos Race Course on July 12, 2015. The owner of record, Jose Gonzalez, and Trainer Mario Garcia did request a split sample.

Owner Jose Gonzalez chose to represent himself in these proceedings. Mr. Gonzalez was served a subpoena for records pertaining to the care and treatment of "Pink Berreta" by Supervising Investigator Blake. He stated he did not have any records for the horse. The Stewards felt this was highly unusual for a businessman, who admitted to having approximately forty horses being cared for at his ranch, not to keep any financial records concerning the money outlay regarding the operation.

Owner Gonzalez stated he had sold "Pink Berreta" to Jose Benevidez in May 2015 for \$20,000. He stated he got the horse back approximately one month later because of lack of payment. These dates are insignificant as, again, Mr. Gonzalez had no document concerning the transaction. He stated the horse had not been sick or injured and did not know how the horse had tested positive for Boldenone. He testified that Owner Jorge Silva gives medication to his horses at the ranch but only Banamine and Bute. Mr. Silva works for Gonzalez as his ranch manager. He stated other medications are administered by Winners Circle, and they send veterinarians to the ranch as needed. He stated he did not know what Boldenone (Equipose) was.

Subpoenas were served on Dr. Richard Beck, DVM, and Dr. Kristine Jensen, DVM, at the offices of Winners Circle Equine Clinic in Hemet, CA. Dr. Beck stated he has never treated or cared for "Pink Berreta." Dr. Jensen stated she only performed a coggins test for equine infectious anemia on the horse. She stated she does not know who treats his horses and has not treated any of his horses at the ranch.

Owner Jose Gonzalez stated he moved his horses from the track to the ranch in May as it was too expensive to keep the horses at the track.

Owner Gonzalez testified that he is in charge at the ranch and tells Silva what to do. Mr. Silva has worked for him for approximately eight years.

Trainer Garcia stated that Owner Gonzalez calls him when he wants the horses to run, and he enters the horses in his name. It appears to this Board that Owner Gonzalez was in total control of

every phase of the operation.

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:* Owner Jose Maria Gonzalez has no previous medication violations. **Mitigating.**
- (2) *The Potential of the Drug to Influence a Horse's Performance:* Boldenone is a long-acting anabolic steroid recommended as an aid for treating debilitated horses. Its use may improve the general state by aiding in correcting weight loss and improving appetite. **Aggravating.**
- (3) *The Legal Availability of the Drug:* Boldenone is a DEA controlled substance and must be administered by a veterinarian. **Aggravating.**
- (4) *Whether There is Reason to Believe the Responsible Party Knew of the Administration of the Drug or Intentionally Administered the Drug:* Mr. Gonzalez stated "Pink Berreta" is stabled at his ranch along with approximately forty other horses. Owner Jorge Silva manages the ranch for him and administers only Banamine and Bute. If other medications are required, veterinarians from Winners Circle in Hemet are sent to the ranch. He testified he was unaware what Boldenone was. The Stewards find it hard to believe he was unaware of what was going on, being the owner of the horses and paying the bills. **Aggravating.**
- (5) *Steps Taken by the Trainer to Safeguard the Horse:* Not applicable. **Neutral.**
- (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:* Boldenone is administered by injection. **Aggravating.**
- (8) *Purse of the Race:* The purse was minimal, \$10,750, 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):* Veterinary Reports do not indicate the horse was prescribed Boldenone. **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 Owner was Acting under the Advice of a Licensed Veterinarian:* There is no evidence Owner Gonzalez was acting on any veterinarian's advice to administer Boldenone. **Neutral to 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 Boldenone was found in urine sample #LA31471 taken from the horse "Pink Berreta," the first place finisher in the third race at Los Alamitos Race Course on July 12, 2015. This finding requires the disqualification of "Pink Berreta" 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). Boldenone 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 Jose Maria Gonzalez, who started the horse "Pink Berreta" in the third race on July 12, 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 & d) (Medication, Drugs and Other Substances – Boldenone - Class III), #1843.1 (b) (Prohibited Drug Substances) and #1902 (Conduct Detrimental to Horse Racing).

During the term of suspension, all licenses and license privileges of Jose Maria Gonzalez are suspended and pursuant to California Horse Racing Board Rule #1528 (Jurisdiction of Stewards to Suspend or Fine), Jose Maria Gonzalez 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# 267948-07/2016

Case# 15LA0149

Dated Oct. 4, 2015 by this Board of Stewards:

James Dreyer
Steward James Dreyer

George Slender
Steward George Slender

Ruben Moreno
Steward Ruben Moreno

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