

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

MARIO GARCIA
CHRB License #272800
Respondent

CHRB Case #15LA0145

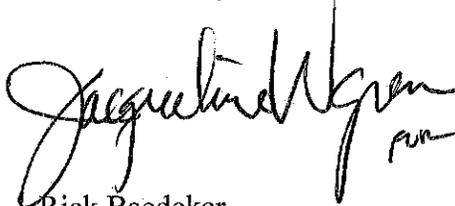
DECISION

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 three thousand dollar (\$3,000.00) 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", with a small "rv" or similar mark at the bottom right of the signature.

Rick Baedeker
Executive Director

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint/Accusation
against:

MARIO GARCIA,
Respondent

License Type: Trainer
License No. 272800-11/2015

Case No. 15LA0145

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, Trainer Mario Garcia, 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

Trainer Mario Garcia was the trainer 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. Trainer Garcia was notified of the positive on July 23, 2015. Owner Jose Maria 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 #15LA0145

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 "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 23, 2015, Respondent was notified that "Pink Berreta" had tested positive for Boldenone.

VII.

The owner 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 Trainer Mario Garcia 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.

Trainer Mario Garcia chose to represent himself in these proceedings.

An important question for this Board was whether Trainer Garcia had knowledge of, or did personally administer, the Boldenone to "Pink Berreta." The testimony should show that this was highly unlikely. Garcia testified that he does not use Boldenone on his horses nor does he have any in his barn. The barn inspection confirmed that. Garcia testified that "Pink Berreta" was shipped to his barn from Owner Gonzalez's ranch on July 10, 2015 and left on July 12, 2015 following the race. He stated he had not seen "Pink Berreta" prior to July 10, 2015. He signed a declaration stating that he was strictly a program trainer for Jose Gonzalez's horses. When asked if he had seen the warnings on the overnights concerning program training, he denied having seen them. It is without a doubt a very risky proposition to train or "program train" in this manner, which was explained to Mr. Garcia. Ship-in horses are a constant problem at Los Alamitos when it comes to a majority of positive tests. He stated that he did not know who was taking care and conditioning the horses for Owner Gonzalez at the ranch in Hemet. He testified that when Gonzalez wanted to enter a horse he would contact him and instruct him what horse to enter and where. According to Garcia, he has never been to the ranch.

It is the opinion of this Board that Garcia was unaware of the administration of Boldenone to "Pink Berreta," however, he did knowingly allow himself to be put in the situation of a program trainer, which he admitted to, and makes him responsible for the positive test of "Pink Berreta," according to California Horse Racing Board Rule #1887 (Trainer to Insure Condition of Horse).

Trainer Garcia has had no medication violations.

It must now be determined if there is any or how much of a penalty that needs to be applied by weighing aggravating or mitigating circumstances in determining Mr. Garcia's culpability. Trainer Garcia is also entitled to a defense of his responsibilities by California Horse Racing Board Rule #1888 (Defense to Trainer Insurer Rule), for which there are four defenses. Sections (a), (b), and (d) are procedural in nature and do not apply in this instance. However, section (c) asks the trainer to show by

a preponderance of the evidence that he made every reasonable effort to protect this horse in his care from tampering by an unauthorized person or persons. In our judgment, Mr. Garcia was remiss in not having more control over "Pink Berreta" by allowing the horse to train at a facility he had no control over and never seeing it until the filly was in to run. It is hard to have any control over your horse when your only contact is within forty-eight hours prior to race time.

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 (\$10,000.00) 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:* Trainer Mario Garcia 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:* It is our opinion that Trainer Garcia did not administer nor was he aware that "Pink Berreta" had been administered Boldenone. Trainer Garcia testified the horse was shipped to him the evening of July 10, 2015 and shipped out July 12, 2015. The arrival and departure slips substantiate this. He also testified that he was nothing more than a program trainer for the horse. **Mitigating.**
- (5) *Steps Taken by the Trainer to Safeguard the Horse:* The horse was only in his care for forty-eight hours. **Mitigating.**
- (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. **Neutral.**
- (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 Trainer was Acting under the Advice of a Licensed Veterinarian:* There is no evidence Trainer Garcia was acting on any veterinarian's advice to administer Boldenone. **Neutral to aggravating.**

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

* * *

Trainer Mario Garcia, who started the horse "Pink Berreta" in the third race on July 12, 2015 at Los Alamitos Race Course, is fined three thousand dollars (\$3,000.00)* 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).

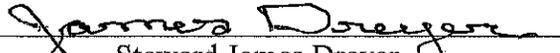
During the term of suspension, all licenses and license privileges of Mario Garcia are suspended and pursuant to California Horse Racing Board Rule #1528 (Jurisdiction of Stewards to Suspend or Fine), Mario Garcia is denied access to premises in this jurisdiction.

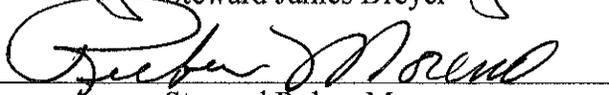
*California Horse Racing Board Rule #1532 states that all fines shall be paid to the paymaster of purses within seven (7) days of imposition [-----] or the license of the person upon whom the fine was imposed shall be suspended.

Lic# 272800-11/2015

Case# 15LA0145

Dated Oct 2, 2015 by this Board of Stewards:


Steward James Dreyer


Steward Ruben Moreno


Steward George Slender

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