

BEFORE THE CALIFORNIA HORSE RACING BOARD
OF THE STATE OF CALIFORNIA

In the Matter of:

Appeal of the Board of Stewards Official Ruling
#58, Los Alamitos Quarter Horse Racing
Association, dated April 13, 2004

BLANE SCHVANEVELDT
Appellant

Case No. SAC 04-037

AMENDED

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the California Horse Racing Board as its Decision in the above-entitled matter.

The Decision shall become effective on July 20, 2007.

IT IS SO ORDERED ON July 19, 2007.

CALIFORNIA HORSE RACING BOARD
Richard B. Shapiro, Chairman



Ingrid J. Fermin
Executive Director

BEFORE THE
CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

In the Matter of the Appeal of the Board of
Stewards' Decision and Ruling #58, dated
April 13, 2004, Against:

BLANE SCHVANEVELDT,

Appellant.

CHRB Case No. SAC 04-037

OAH No. L2005050399

PROPOSED DECISION

This administrative appeal was heard by Julie Cabos-Owen, Administrative Law Judge with the Office of Administrative Hearings (OAH), on April 17, 2007, in Los Angeles, California. Martin Milas, Deputy Attorney General (DAG Milas), represented the California Horse Racing Board (Board). Neither Blane Schvaneveldt (Appellant) nor his counsel, Neil Papiano of Iverson, Yoakum, Papiano & Hatch appeared at the April 17, 2007 hearing (administrative appeal hearing).¹

Oral and documentary evidence was received and argument was heard. The record was closed, and the matter was submitted for decision on April 17, 2007.

FACTUAL FINDINGS

1. Appellant is licensed by the Board as a Trainer, License No. 068268.
2. On April 15, 2004, Appellant filed a Notice of Appeal and Request for Temporary Stay, appealing the April 13, 2004 Decision and Official Ruling #58 of the Board of Stewards in Case Number 03LA0133 (Stewards' Decision), suspending Appellant's trainer license for 45 days, effective April 19, 2004, and fining him \$2,500. On April 15, 2004, the Board granted Appellant's request for a stay from the Stewards' Decision.

¹ Despite the non-appearance of Appellant, DAG Milas did not move for dismissal of the appeal. To provide a complete record, he agreed to the admission of virtually all of the exhibits filed by Appellant in the instant appeal (except Exhibits 2.E and 2.F). He also agreed to the lodging of Appellant's Hearing Brief and Appellant's Motion in Limine. DAG Milas further agreed to the admission of the Declaration of Blane Schvaneveldt, despite its non-compliance with Government Code section 11514, in order to provide the finder of fact with Appellant's version of events.

3(a). The Stewards' Decision was issued after an April 8, 2004 hearing (Stewards' Hearing) at which Appellant and his attorney appeared. The Steward's Decision was based on the following facts, which were undisputed on appeal:

(1). On November 7, 2003, race horse "OFFDASHN" finished first in the fourth race at Los Alamitos Race Course (the racetrack), in Los Alamitos, California. Appellant was the trainer of record for "OFFDASHN" on that date.

(2). On November 7, 2003, a urine sample was taken from "OFFDASHN" and submitted to Truesdail Laboratories, Inc. (Truesdail) for analysis. Truesdail screened and confirmed the analysis of the urine sample on November 17, 2003.

(3). On November 22, 2003, Board Investigators Marla Lloyd (Lloyd) and Thomas Blake (Blake) received notice from Truesdail that the urine sample taken from "OFFDASHN" on November 7, 2003, had tested positive for the presence of Clenbuterol in excess of the permitted level. Clenbuterol is a Class 3 prohibited substance.

(4). "[On November 22, 2003,] A SEARCH OF MR. SCHVANEVELDT'S LINCOLN NAVIGATOR, LOCATED IN FRONT OF THE GRANDSTAND IN PREFERRED PARKING ON THE RACETRACK PREMISES, REVEALED NEEDLES, SYRINGES AND VARIOUS INJECTABLE MEDICATIONS." (Stewards' Decision, Finding of Fact III.)

(5). "A SECOND SEARCH BY CALIFORNIA HORSE RACING BOARD INVESTIGATORS OF MR. SCHVANEVELDT'S BARN AND OFFICES [on the racetrack premises] PRODUCED A BOTTLE OF VENTIPULMIN WHICH CONTAINS CLENBUTEROL. THE [Ventipulmin] SYRUP IS ADMINISTERED ORALLY." (Stewards' Decision, Finding of Fact IV.)

(6). "[Mr. Schvaneveldt stated,] 'THE MEDICATIONS AND SYRINGES IN MY CAR CAME FROM MY RANCH. I FORGOT TO TAKE THEM OUT. IT WAS REALLY STUPID OF ME.'" (Stewards' Decision, Finding of Fact V.)

3(b). The Stewards' Decision included the following conclusion:

TESTIMONY AND EVIDENCE PROVED THAT BLANE SCHVANEVELDT TRAINED THE HORSE "OFFDASHN" WHEN HE RACED ON NOVEMBER 7, 2003, IN THE FOURTH RACE AT LOS ALAMITOS RACE COURSE. IT WAS PROVEN THAT "OFFDASHN" RACED WITH THE PROHIBITED DRUG CLENBUTEROL (EXCEEDING THE PERMITTED LEVEL) IN HIS SYSTEM ON NOVEMBER 7, 2003. A LEGAL SEARCH OF MR. SCHVANEVELDT'S VEHICLE BY THE CALIFORNIA HORSE RACING BOARD INVESTIGATORS UNCOVERED ILLEGAL CONTRABAND. ATTORNEY PAPIANO OFFERED THREE MITIGATING CIRCUMSTANCES: THE FIRST WAS

THAT THE CONTRABAND WAS MEANT FOR THE RANCH. THE ITEMS DISCOVERED LED THE STEWARDS TO BELIEVE THIS CONTENTION, HOWEVER IT DOES NOT RELIEVE SUBJECT OF RESPONSIBILITY. THE SECOND FACTOR OFFERED IN MITIGATION WAS THE TRAINER[']S AGE AND FORGETFULNESS. MR. SCHVANEVELDT HAS TRAINED HORSES FOR FORTY-FIVE YEARS AND IS WELL RESPECTED. LASTLY, MR. PAPIANO MENTIONS MR. SCHVANEVELDT'S GOOD RECORD. IN REACHING THE STEWARDS['] DECISION REGARDING A PENALTY, IT WAS TAKEN INTO CONSIDERATION THAT THE TRAINER HAS THREE PREVIOUS, CLASS 1, 2 OR 3 VIOLATIONS WITHIN THE LAST THREE YEARS.

3(c). The Board of Stewards issued Official Ruling #58 as follows:

PURSUANT TO CALIFORNIA HORSE RACING BOARD RULE #1900 (GROUNDS FOR SUSPENSION OR REVOCATION)[,] BLANE SCHVANEVELDT IS SUSPENDED FOR FORTY-FIVE (45) DAYS (April 19, 2004 THROUGH June 2, 2004) AND FINED THE SUM OF TWENTY FIVE HUNDRED (\$2500.00)* FOR VIOLATION OF CALIFORNIA HORSE RACING BOARD RULES #1489 (H & J) (GROUNDS FOR DENIAL OR REFUSAL OF LICENSE), #1843 (A, C, & D) (MEDICATION, DRUGS AND OTHER SUBSTANCES), #1887 (A) (TRAINER TO INSURE CONDITION OF HORSE), #1890 (POSSESSION OF CONTRABAND) AND #1902 (CONDUCT DETRIMENTAL TO HORSE RACING).

DURING THE TERM OF SUSPENSION, ALL LICENSES AND LICENSE PRIVILEGES OF BLANE SCHVANEVELDT ARE SUSPENDED, AND PURSUANT TO CALIFORNIA HORSE RACING BOARD RULE #1528 (JURISDICTION OF STEWARDS) SUBJECT 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 (4/20/2004) or the license of the person upon whom the fine was imposed shall be suspended.

4(a). In his April 15, 2004 Notice of Appeal, Appellant stated several grounds for appeal, only three of which were pursued in Appellant's Hearing Brief, filed with OAH on February 9, 2006, and submitted at the administrative appeal hearing. These three grounds for appeal were enumerated in the original Notice of Appeal as follows:

1. The [Board's] car search was unauthorized by Board Rules and/or was in violation of Mr. Schvaneveldt's Constitutional Rights to due process and to be free from unreasonable searches of his person and property as protected by the Fourth and Fourteenth Amendments to the United States Constitution and Article I, Section 13 of the California State Constitution. The Board of

Stewards should have excluded this evidence from their consideration. A violation of Rule 1890 cannot be predicated on evidence seized in violation of the Constitutional right to be free from unreasonable searches and seizures.

2. The evidence does not support a finding and/or violation of the rules (§ 1902) that Mr. Schvaneveldt's conduct in this case was detrimental to racing.

3. The Decision of the Board of Stewards is an abuse of discretion in that the Board of Stewards has failed to properly consider all the mitigating circumstances as allowed in Rule 1888 and the Horseman's Handbook in imposing such a very severe penalty, a suspension of Mr. Schvaneveldt's Trainer's License for 45 days.

4(b). In support of his assertion that evidence should be excluded, Appellant maintained that the searches permitted under California Code of Regulations, title 4, sections 1924 and 1420, applied only to "areas actually utilized for horse racing," and not "to vehicles in public parking lots." He stated that the Board "interpretation extending searches to public parking lots would be a violation of search and seizure laws and unconstitutional."

5. In his Hearing Brief, Appellant's issues on appeal varied slightly from those in his Notice of Appeal, as follows:

(a). In maintaining that the items seized from his vehicle should be excluded as evidence, Appellant asserted for the first time that he gave no permission to search his vehicle.

(b). Appellant asserted that the items seized in the search of his vehicle in the public parking lot were not "contraband" in violation of Rules 1890 and 1891. According to Appellant, contraband was limited to possession of specified items in the "restricted areas" of the racing enclosure, not in vehicles parked in "public parking lots outside the racing enclosure."

(c). Appellant asserted the evidence seized from his vehicle and the finding of approximately eight nanograms per millimeter of Clenbuterol in OFFDASHN does not support a finding that his conduct was "detrimental to racing" in violation of Rule 1902.

(d). Appellant contended that a 45 day suspension was not warranted in this case, and that all of the evidence mitigated against the imposition of such a "severe penalty."

6. At the administrative appeal hearing, the evidence established the following:

(a) On November 22, 2003, Lloyd and Blake went to the racetrack and found Appellant in the paddock area. Blake informed Appellant about the positive test result for OFFDASHN and asked Appellant if he would come to Blake's office to sign the Positive

Test Notification Form (Notification). Appellant agreed. Through his signature on the document, Appellant acknowledged that he had received the Notification.

(b)(1) Blake then told Appellant he needed to search Appellant's vehicle. Appellant was cooperative, and directed Blake to his vehicle. He told Blake that his vehicle was locked and that he would have to open it using the combination lock on the door. Blake did not order Appellant to unlock his vehicle at any time. Appellant approached his vehicle and unlocked it. He did not act surprised that Blake wanted to look inside the vehicle. On at least one former occasion, when one of Appellant's horses had a positive drug test result following a race, Blake had conducted an investigation which included a search of Appellant's barn and his vehicle.

(b)(2) The facts set forth in Factual Finding 6, subdivision (b)(1), were established through the testimony of Blake. Appellant's declaration disputed Blake's testimony in that Appellant asserted that Board investigators "ordered" him to unlock his vehicle and that they did not ask for his consent to search his vehicle. Blake's testimony was more credible than Appellant's declaration for the following reasons:

(A). Appellant's assertion of non-consent is suspect because he did not raise the issue at the 2004 Stewards' hearing or in his Notice of Appeal, but instead waited until 2006 to make such an assertion.

(B). Blake appeared in person to testify at the administrative appeal hearing and his demeanor was candid and forthright, rendering him a credible witness. Appellant did not appear in person, and therefore his credibility in comparison to Blake's could not be assessed.

(c). Appellant did not personally administer Clenbuterol to OFFDASHN before her race on November 7, 2003. He had instructed his groom, Rafael Chavez (Chavez), to administer the medication to OFFDASHN and other horses in his barn. Chavez administered the medication to OFFDASHN four days before she ran the race.

(d). Appellant has trained horses for over 45 years, 35 of which were spent at Los Alamitos Race Course.

7. At the administrative appeal hearing, Appellant introduced no evidence that he made any effort to protect his horses from tampering.

8. As of April 15, 2007, Appellant was exercising his rights as a licensed trainer and was seen, by Blake, walking around in the paddock area of the racetrack.

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LEGAL CONCLUSIONS

1. Cause does not exist to overrule the April 13, 2004 Decision and Ruling #58 of the Board of Stewards against Appellant, pursuant to Business and Professions Code section 19461 and California Code of Regulations, title 4, sections 1902, 1843, 1887 and 1888, in that Appellant did not refute the Board of Stewards' finding that a horse in his care, participating in a race, carried in its body a drug metabolite in excess of the limit established by the Board, as set forth in Factual Findings 1 through 8 and Legal Conclusions 3, 4, 5, 6, 7, 8, 9, 10 and 14.

2. Cause does not exist to overrule the April 13, 2004 Decision and Ruling #58 of the Board of Stewards against Appellant, pursuant to Business and Professions Code section 19461 and California Code of Regulations, title 4, sections 1902 and 1890, in that Appellant did not refute that the search of his vehicle was legal or that he had on premises, under his control, unauthorized hypodermic syringes and hypodermic needles, as set forth in Factual Findings 1 through 8, and Legal Conclusions 3, 4, 5, 6, 11, 12, 13 and 14.

3. Every license granted under the California Horse Racing Law (Bus. & Prof. Code, § 19400, et seq.) is subject to suspension or revocation by the Board if the Board finds that the licensee has violated any of the Board's laws, rules or regulations. (Bus. & Prof. Code, § 19461.)

4. California Code of Regulations, title 4, section 1761 (Rule 1761),² subdivision (a), provides that every decision of the Board of Stewards may be appealed to the board, except a decision concerning disqualification of a horse due to a foul or a riding or driving infraction. "Appeals shall be made in writing, stating the reason or reasons for the appeal, and shall be signed by the appellant, appellant's attorney, or appellant's representative." (Rule 1761, subd. (b).)

5(a). California Code of Regulations, title 4, section 1764 (Rule 1764), states, in pertinent part, that "[t]he burden shall be on the appellant to prove the facts necessary to sustain the appeal."

5(b). Business and Professions Code section 19517, subdivision (a), states:

The [California Horse Racing Board], upon due consideration may overrule any steward's decision other than a decision to disqualify a horse due to a foul or a riding or a driving infraction in a race, if a preponderance of the evidence indicates any of the following:

(1) The steward mistakenly interpreted the law.

² Regulations adopted by Board are commonly referred to as "Rules," rather than sections of the California Code of Regulations.

(2) New evidence of a convincing nature is produced.

(3) The best interests of racing and the state may be better served.

5(c). Therefore, Appellant bears the burden to establish, by a preponderance of the evidence, that one of the enumerated grounds exists for the Board to overrule the decision of the Board of Stewards.

6. California Code of Regulations, title 4, section 1902 (Rule 1902), states, in pertinent part: "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. . . ."

7(a). California Code of Regulations, title 4, section 1843 (Rule 1843) provides that "no horse participating in a race shall carry in its body any drug substance or its metabolites or analogues," and "no drug substance shall be administered to a horse which is entered to compete in a race," except for drug substances authorized by the Board.

7(b). Furthermore, even the use of authorized substances may constitute a violation of the Rules if used in unauthorized amounts. California Code of Regulations, title 4, section 1843.1, subdivision (b), defines a "prohibited drug substance" to include "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."

8(a). California Code of Regulations, title 4, section 1887 (Rule 1887), subdivision (a), states, in pertinent part: "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. . . ."

8(b). Rule 1843, subdivision (d), further provides:

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.

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9. California Code of Regulations, title 4, section 1888 (Rule 1888), states:

A trainer or other person charged with a violation of Rule 1887 of this division may defend, mitigate or appeal the charge if:

- (a) He was not, before the commencement of any proceeding against him, informed of the charges being brought against him;
- (b) He was not permitted counsel, representation or an advisor of his choosing in any hearing before the stewards concerning the charges;
- (c) He shows, by a preponderance of evidence, that he made every reasonable effort to protect the horses in his care from tampering by unauthorized persons; and
- (d) He was not permitted to introduce evidence in his own behalf before any finding or ruling was made against him. . . .

10(a). Appellant did not refute, by a preponderance of the evidence, the facts that: (a) the urine sample taken from OFFDASHN on November 7, 2003, had tested positive for the presence of Clenbuterol in excess of the permitted level; and (b) Appellant was OFFDASHN's trainer and was responsible for OFFDASHN's care. Therefore, pursuant to Rule 1843 and 1887, Appellant did not rebut the presumption that Clenbuterol had been administered to OFFDASHN and that Appellant was negligent in the care of OFFDASHN.

10(b). Additionally, Appellant did not prove by a preponderance of the evidence that he was denied due process in his proceeding before the Board of Stewards (Rule 1888, subdivisions (a), (b) and (d)), or that he made every reasonable effort to protect OFFDASHN, a horse in his care, from tampering by unauthorized persons (Rule 1888, subdivision (c)). Consequently, Appellant did not establish any of the defenses permitted under Rule 1888.

11. California Code of Regulations, title 4, section 1890 (Rule 1890 – Possession of Contraband), states, in pertinent part:

No person other than a veterinarian licensed by the Board, shall have in his possession on the premises during any recognized meeting any . . . hypodermic syringe or hypodermic needle or similar instrument which may be used for injection.

12(a). Appellant does not dispute that hypodermic needles and syringes were found in his vehicle which was parked in front of the grandstand in the parking lot of the racetrack premises. This constituted possession of contraband in violation of Rule 1890. However, in his Hearing Brief, Appellant argues that this evidence was not legally obtained and should

not be used as a basis for any violations. Appellant's arguments for exclusion of the contraband evidence were not persuasive.

12(b). First, Appellant argued that he did not consent to the search of his vehicle. However, Appellant's assertion of non-consent was not new evidence of a convincing nature and, therefore, provided no basis to overrule the Stewards' Decision pursuant to Business and Professions Code section 19517, subdivision (a)(2).

13(a). Second, Appellant asserted that the items seized in the search of his vehicle in the public parking lot were not "contraband," because contraband was limited to possession of specified items in the "restricted areas" of the racing enclosure, not in vehicles parked in "public parking lots outside the racing enclosure." However, this argument is based on an inaccurate reading of the applicable rules.

13(b). California Code of Regulations, title 4, section 1929 (Rule 1929) provides:

The Board, its investigators, or racing officials may enter the stables, rooms, **or other places within the premises of a recognized meeting** to inspect and examine the personal effects and property of any licensee or other person in or about or permitted access to any restricted area; and each licensee in accepting his license, and each person entering such restricted area does thereby consent thereto. (Emphasis added.)

13(c). California Code of Regulations, title 4, section 1420 (Rule 1420), subdivision (q), provides:

"Premises" means the inclosure and all other areas collectively utilized by an association in connection with its conduct of a licensed race meeting, **including parking lots**, auxiliary stabling areas, public inclosure and restricted areas, whether or not the areas are adjacent to the inclosure. (Emphasis added.)

13(d). Rule 1890 prohibits the possession of contraband "on the premises." Pursuant to Rule 1420, "premises" includes the parking lots of the racetrack. Additionally, Rules 1924 and 1420 authorize the inspection of places within the parking lot, which would include vehicles parked there and the personal effects and property contained therein. Therefore, contraband was found in Appellant's possession following an inspection of the "premises," as authorized by the Rules.

13(e). Given the foregoing, Appellant did not establish, by a preponderance of the evidence, that the Board of Stewards misinterpreted the law when it found that a "legal" search of Appellant's vehicle uncovered illegal contraband. Appellant therefore provided no basis to overrule the Stewards' Decision pursuant to Business and Professions Code section 19517, subdivision (a)(1).

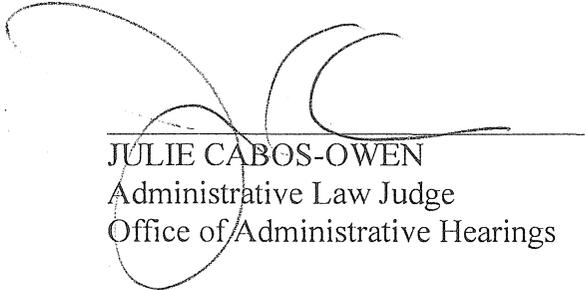
14. Appellant did not establish, by a preponderance of the evidence, that the best interests of racing and the state may be better served by overruling the Stewards' Decision pursuant to Business and Professions Code section 19517, subdivision (a)(3). The Stewards took into consideration the three mitigating circumstances raised by Appellant's attorney (that the contraband was meant for the Appellant's ranch; Appellant's age and forgetfulness; and Appellant's lengthy tenure as a trainer). The Stewards also took into consideration Appellant's three previous violations within the prior three years. The evidence presented at the administrative appeal hearing was insufficient to warrant overruling the Stewards' Decision or modifying the level of penalty imposed.

ORDER

WHEREFORE, THE FOLLOWING ORDERS are hereby made:

The Appeal of Decision and Official Ruling #58 of the Board of Stewards, Los Alamitos Race Course, Case No. 03LA0133, dated April 13, 2004, against Appellant Blane Schvaneveldt, Trainer License No. 068268, is DENIED.

DATED: May 15, 2007



JULIE CABOS-OWEN
Administrative Law Judge
Office of Administrative Hearings