

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

ERIK FLORES
CHRB License #274481
Respondent

CHRB Case No. 18LA0135

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 (\$3,000.00) fine and setting the suspension.

IT IS SO ORDERED ON November 29, 2018.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman



Rick Baedeker
Executive Director

State of California

CALIFORNIA HORSE RACING BOARD

**PROPOSED DECISION
of the
BOARD OF STEWARDS**

Los Alamitos Race Course

Date: October 21, 2018

In the Matter of the Complaint Against:

Name

Respondent: Erik Flores

Case# 18LA0135

INTRODUCTION

This matter was heard before the Board of Stewards, Ronald Church, David Nuesch, and James Dreyer, in the Los Alamitos Stewards' Office September 29, 2018.

Present at the hearing was the respondent, Erik Flores, Supervising Investigator Kevin Kitashima and The Board of Stewards. Court Reporter Michelle Derieg transcribed the proceedings.

PROCEDURAL BACKGROUND

Erik Flores was the owner of record for the horse "Sovereign Jess," who started in the eighth race at Los Alamitos Race Course on June 9, 2018. On June 21, 2018, Sacramento Headquarters emailed information to Supervising Investigator Tom Blake at Los Alamitos Race Course that "Sovereign Jess" (Urine Sample #LA41118) tested positive for the class III prohibited drug Clenbuterol, after finishing first in the eighth race on June 9, 2018. A complaint was filed against owner Erik Flores since the horse "Sovereign Jess" was shipped in less than seven (7) consecutive calendar days prior to the day of the race, and not in the care of a Board-licensed trainer. Mr. Flores was notified of the positive, by telephone, on June 21, 2018. On June 22, 2018 trainer Ricardo Guillen completed the forms for the split sample testing. Texas Veterinary Medical Diagnostic Laboratory was selected as the lab to conduct the testing of the split sample.

On August 30, 2018, investigators received a Final Report from TVMDL, confirming that the split sample #LA41118 contained the presence of Clenbuterol (38pg/ml).

LIST OF EXHIBITS

Complainant / State California Horse Racing Board Complaint
#18LA0135

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 "Sovereign Jess" when it raced in the eighth race on June 9, 2018 at Los Alamitos Race Course. "Sovereign Jess" finished first in the aforementioned race.

III.

A post-race Urine sample (labeled sample #LA41118) was taken from "Sovereign Jess" 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 #LA41118 from "Sovereign Jess" was uninterrupted.

V.

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

VI.

On June 21, 2018 the respondent was notified by telephone.

VII.

The respondent's trainer elected to have a split sample sent to the Texas Veterinary Medical Diagnostic Laboratory.

VIII.

On August 30, 2018, Investigator Blake received confirmation from TVMDL that urine sample #LA41118 contained Clenbuterol.

APPLICABLE RULES

CHRB rule violations listed in the complaint

- | | |
|-------------|---|
| Rule 1887 | (Trainer or Owner to Insure Condition of Horse) |
| Rule 1843 | (Medication, Drugs and Other Substances) |
| Rule 1843.1 | (Prohibited Drug Substances) |
| Rule 1844 | (Authorized Medication) |
| Rule 1859.5 | (Disqualification Upon Positive Test Finding) |

DISCUSSION

Owner Erik Flores appeared before the Stewards for his scheduled hearing September 29, 2018. Consequently this discussion will be based solely on the statements he gave when presented with the charges he was facing after he was notified on June 21, 2018, by the Board Investigators.

As in most of these Clenbuterol positives this was another example of a ship-in horse. "Sovereign Jess" shipped into Los Alamitos on June 8, 2018, one day prior to his scheduled race. The horse was shipped back to the Mr. Flores' ranch on June 12, following the race.

Owner Flores stated that "Sovereign Jess" had been training at his ranch prior to shipping into Los Alamitos for his race on June 9, 2018. Mr. Flores attested that he does not keep Clenbuterol in his barn, and he has always been aware of the zero tolerance policy on the drug. Mr. Flores explained that he does rent stalls to other trainers, as part of the ranch's business model, some of which are stabled in the same barn as his horses. Mr. Flores feels that his immediate "neighbors" in his barn are trustworthy, and wouldn't have maliciously treated his horse, but with no security cameras or night watchman, he cannot say with certainty. Mr. Flores also mentioned that he did decline to sell "Sovereign Jess" to one of his tenants, and could have been a victim of retaliation from that individual, but once again, couldn't say with certainty.

Though Mr. Flores contends that he doesn't know how "Sovereign Jess" could have gotten the Clenbuterol, the fact remains the horse did test positive for it, and according to California Horse Racing Board Rule #1887 (Trainer or Owner to Insure Condition of Horse), owner Flores is the co-absolute insurer for the condition of the horse, and must be held accountable.

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.

A review of the aggravating and mitigating factors is now required:

- (1) *Past Medication Record of the Licensee:* Owner Flores has been licensed since 2003 and has had no medication violations. **Mitigating.**
- (2) *The Potential of the Drug to Influence a Horse's Performance:* Clenbuterol can enhance a horse's performance. **Aggravating.**
- (3) *The Legal Availability of the Drug:* Clenbuterol is available from any veterinarian; however, in Quarter Horses it is a zero tolerance drug. **Aggravating.**
- (4) *Whether there is Reason to Believe the Responsible Party Knew of the Administration of the Drug or Intentionally Administered the Drug:* "Sovereign Jess" was shipped in to Los Alamitos on June 8, the day prior to the race, and was shipped out on June 12, by owner Erik Flores. Given the fact that Mr. Flores stated in the hearing that he has always been aware of the zero tolerance policy on Clenbuterol, it is reasonable to assume that owner Flores did not directly administer, nor was he aware, that "Sovereign Jess" had been administered Clenbuterol prior to the race. However, the fact remains that he still must be held responsible. **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 that he has made any changes at his ranch to prevent this from happening in the future. **Aggravating.**
- (7) *Probability of Environmental Contamination or Inadvertent Exposure Due to Human Drug Use or Other Factors:* This is a **neutral** factor as there is no evidence of such.
- (8) *Purse of the Race:* The purse was \$8,000, which is not excessive. **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 having been prescribed Clenbuterol. **Aggravating**
- (10) *Whether there was any Suspicious Wagering Pattern on the Race:* As there was no evidence of any unusual wagering pattern, this is a **mitigating** factor.
- (11) *Whether the Licensed trainer was acting under the Advice of a Licensed Veterinarian:* There is no evidence of any veterinarian's advice for approval of this drug to be administered to "Sovereign Jess". **Aggravating.**

A review of the factors reveals that there are more aggravating factors, than neutral & mitigating.

CONCLUSION

Following a formal hearing, this Board of Stewards concludes the class III prohibited drug Clenbuterol was found in Urine sample #LA41118 taken from the horse "Sovereign Jess," the first place finisher in the eighth race at Los Alamitos Race Course on June 14, 2018. This finding requires the disqualification of "Sovereign Jess" in accordance with California Horse Racing Board Rule #1859.5.

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

* * *

OWNER ERIK FLORES, WHO STARTED THE HORSE "SOVEREIGN JESS" IN THE EIGHTH RACE ON JUNE 9, 2018 AT LOS ALAMITOS RACE COURSE IS FINED THREE THOUSAND DOLLARS (\$3,000.00)* AND SUSPENDED SIXTY (60) DAYS) AND PLACED ON PROBATION FOR ONE YEAR FROM THE DATE OF THIS RULING PURSUANT TO CALIFORNIA HORSE RACING BOARD RULE #1887 (TRAINER OR OWNER TO INSURE CONDITION OF HORSE) AND RULE #1859.5 (DISQUALIFICATION UPON POSITIVE TEST) FOR VIOLATION OF CALIFORNIA HORSE RACING BOARD RULES #1843 (a, b & d) (MEDICATION, DRUGS AND OTHER SUBSTANCES) (CLENBUTEROL - CLASS III) #1843.1 (b) (PROHIBITED DRUG SUBSTANCES), AND 1844(e)(6)(AUTHORIZED MEDICATION).

FOR CAUSE, THIRTY (30) DAYS OF THE SIXTY (60) DAY SUSPENSION ARE STAYED PROVIDED MR. FLORES IS NOT IN VIOLATION OF CALIFORNIA HORSE RACING BOARD RULES AND REGULATIONS #1843 AND #1887 REGARDING CLASS I, II, OR III DRUG SUBSTANCES DURING THE TERM OF PROBATION. IF MR. FLORES VIOLATES A CONDITION OF HIS PROBATION, THE ABOVE REFERENCED THIRTY (30) DAY STAY OF SUSPENSION SHALL BE LIFTED AND THE ACTUAL SUSPENSION SHALL BE IMPOSED AFTER NOTICE AND HEARING.

DURING THE TERM OF SUSPENSION ALL LICENSES AND LICENSE PRIVILEGES OF ERIK FLORES ARE SUSPENDED AND PURSUANT TO CALIFORNIA HORSE RACING BOARD RULE #1528 (JURISDICTION OF STEWARDS TO SUSPEND OR FINE) ERIK FLORES 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 [-----] or the license of the person upon whom the fine was imposed shall be suspended.

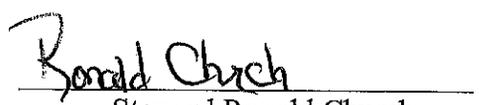
Lic# 274481 – 03/2019

Case# 18LA0135

Dated October 28, 2018 by this Board of Stewards:


Steward David Nuesch


Steward James Dreyer


Steward Ronald Church

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