

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

HERBERT HO
CHRB License #071957
Respondent

CHRB Case #14LA0149

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 (\$3000.00) fine and setting the sixty (60) day suspension with fifteen (15) days stayed on condition that the Respondent not have any violations for Class I, II, III drug substances for a period of one (1) year.

IT IS SO ORDERED ON September 24, 2014.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman



Rick Baedeker
Executive Director

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint/Accusation
against:

HERBERT HO,
Respondent

License Type: Trainer
License No. 071957-08/2016

Case No. 14LA0149

PROPOSED DECISION

INTRODUCTION

This matter was heard on August 1, 2014 before the Board of Stewards, Randy Winick, Ruben Moreno, and James Dreyer, in the Los Alamitos Stewards' Office.

Present at the hearing was the Respondent, Trainer Herbert Ho, Investigator Dennis Drulias, and Stewards Randy Winick, Ruben Moreno, and James Dreyer. Court Reporter Michelle Derieg transcribed the proceedings.

PROCEDURAL BACKGROUND

Trainer Herbert Ho was the trainer of record for the horse "Forsee," who started in the second race at Los Alamitos Race Course on June 15, 2014. On June 24, 2014, Sacramento Headquarters faxed information to Supervising Investigator Tom Blake at Los Alamitos Race Course that "Forsee" (Urine Sample #LA26070) tested positive for the class III prohibited drug Clenbuterol after finishing second in the second race on June 15, 2014. Trainer Ho was notified of the positive on June 27, 2014. No barn inspection was conducted on this case as the horse was shipped in from a private ranch. Both Trainer Ho and Owner Luis Ramirez declined to submit the split sample to be tested.

LIST OF EXHIBITS

Complainant / State

California Horse Racing Board Complaint
#14LA0149

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 “Forsee” when it raced in the second race on June 15, 2014 at Los Alamitos Race Course. “Forsee” finished second in the aforementioned race.

III.

A post-race urine sample (labeled sample #LA26070) was taken from “Forsee” 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 #LA26070 from “Forsee” was uninterrupted.

V.

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

VI.

On June 27, 2014, Trainer Herbert Ho was notified that “Forsee” had tested positive for Clenbuterol.

APPLICABLE RULES

- California Horse Racing Board Rules:
 - 1887 (Trainer to Insure Condition of Horse)
 - 1843 (Medication, Drugs and Other Substances)
 - 1859.5 (Disqualification Upon Positive Test Finding)

DISCUSSION

It was first explained to Trainer Herbert Ho that, in addition to this hearing concerning the positive test for Clenbuterol, the Stewards would also disqualify the horse in question, "Forsee" 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 #148 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 "Forsee," the second place finisher in the second race at Los Alamitos Race Course on June 15, 2014. The owner of record, Luis M. Ramirez, and Trainer Herbert Ho did not request a split sample.

Trainer Herbert Ho chose to represent himself in these proceedings, and Owner Luis M. Ramirez was unable to attend the hearing. Mr. Ho said this horse shipped in to the holding barn one day prior to his race, June 14, 2014, which is required by Rule, and then left the night of June 15, 2014, after he had run and cooled out. An interesting fact unknown to the Stewards prior to this hearing is that apparently Herbert Ho ships in all his runners the day prior to racing, and they leave the same evening they run. Mr. Ho does not have any stalls assigned to him at Los Alamitos. They are all shipped in to race only. He is the consummate program trainer. Mr. Ho stated to the Stewards that the positive test finding was shown in the urine but not the blood test. Investigator Kevin Kitashima stated that the reason it was not in the blood was because the administration must have been seven days out from race time or more. Otherwise, if Clenbuterol was administered closer to race day it would have been present in the blood. The amount of 238 picograms indicates it was either a low dose or given a relatively long time out from the race he was in. Herbert Ho suggested but was not positive that this horse may have been match raced and that he got this information from the ranch manager, Jose Camacho, but it was just hearsay. This information was disclosed by Camacho to Mr. Ho after he received notification of a positive test for Clenbuterol. Mr. Ho trusted Jose Camacho and Mr. Ramirez, the owner, that his horses were medication clear. When he took this horse, Herbert never saw this horse before the night he ran. When asked how he trains his horses, Mr. Ho said he occasionally visits the ranches that they are stabled at and trains but not on this occasion. It is without a doubt a very risky proposition to train or "program train" in this manner, which was explained to Mr. Ho. Ship-in horses are a constant problem at Los Alamitos when it comes to a majority of positive test findings.

In closing, it should be stated that Herbert Ho was apologetic and very contrite in his testimony. The only medication that "Forsee" was given for this race was an oral administration of bute the afternoon before race day and a veterinary administration of lasix prior to racing on race day

by Dr. Lorbecki, according to the confidential reports.

Mr. Ho has only had one medication violation since 2008 for bute. It also should be noted that not having any of his starters in his possession during their lead up to races is not a conventional way of training to say the least.

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. Ho's culpability. Trainer Ho is also entitled to a defense of his responsibility 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. Ho was remiss in not having more control over the horses he trains by only having ship-ins to race and train under his name. It is hard to have any control over your horse when your only contact is within twenty-four 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 Ho has had only one medication violation: a high bute. We consider this **mitigating**.
- (2) *The Potential of the Drug to Influence a Horse's Performance:* Clenbuterol can enhance a horse's performance, however, at 238 picograms/ml, it is very unlikely. **Neutral**.
- (3) *The Legal Availability of the Drug:* Clenbuterol is available from any veterinarian as it is not an illegal drug to use, just to race on. This is a **neutral** factor.
- (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 Ho did not administer nor was he aware that "Forsee" had been administered Clenbuterol. "Forsee" was shipped to Mr. Ho on June 14, 2014 from a private facility and shipped out to the same destination on June 15, 2014 following the race. This is a **mitigating** factor.

- (5) *Steps Taken by the Trainer to Safeguard the Horse:* This is a **neutral** factor as the horse was shipped to Trainer Ho twenty-four hours prior to the race.
- (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:* This is a **neutral** factor as there is no evidence of such.
- (8) *Purse of the Race:* The purse was minimal, \$7,840, 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 Clenbuterol. **Aggravating**.
- (10) *Whether there was any Suspicious Wagering Pattern on the Race:* **Mitigating** as there is no evidence of any unusual wagering pattern.
- (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 "Forsee." **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 substance, Clenbuterol, was found in urine sample #LA26070 taken from the horse "Forsee," the second place finisher in the second race at Los Alamitos Race Course on June 15, 2014. This finding requires the disqualification of "Forsee" 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). 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

* * *

Trainer Herbert Ho who started the horse "Forsee" in the second race on June 15, 2014 at Los Alamitos Race Course, is fined three thousand dollars (\$3,000.00),* 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 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).

Fifteen (15) of the days of suspension are stayed. Herbert Ho is placed on probation and shall not have any violations for Class I, II, or III substances. If probation is violated subject shall serve the fifteen (15) stayed days.

During the term of suspension, all licenses and license privileges of Herbert Ho are suspended and pursuant to California Horse Racing Board Rule #1528 (Jurisdiction of Stewards to Suspend or Fine), Herbert Ho 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# 071957-08/2016

Case# 14LA0149

DATED: August 16, 2014

By the Los Alamitos Board of Stewards:

James D. Dwyer

Gene M. Mord

Randy W. Wink

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