

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

JAVIER LOPEZ
Owner, CHRB License #323831
Respondent

CHRB Case No. 19LA0019

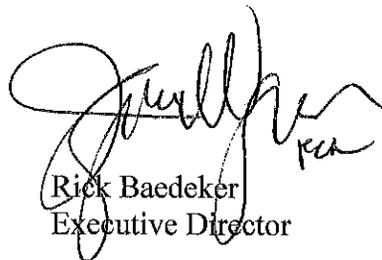
DECISION

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 five thousand (\$5,000.00) fine and setting the suspension.

IT IS SO ORDERED ON July18, 2019.

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: July 7, 2019

In the Matter of the Complaint Against:

Name

Respondent: Javier Lopez

Case# 19LA0019

INTRODUCTION

This matter was heard before the Board of Stewards, Scott Chaney, David Nuesch, and James Dreyer, in the Los Alamitos Stewards' Office on June 7, 2019.

Present at the hearing was the Jesus Nunez, Supervising Investigators Kevin Kitashima and Barrett Halcromb, Angela Aquino, Roberto Dedios, Attorneys Sharon Tekolian and Mike Flory. Respondent Javier Lopez did not appear before the Board of Stewards, as instructed, and did not request a continuance. Court Reporter Michelle Derieg transcribed the proceedings.

PROCEDURAL BACKGROUND

Javier Lopez was the owner of record for the horse "Somethingaboutnick," who finished first, in the first race at Los Alamitos Race Course on January 12, 2019. On January 24, 2019, Sacramento Headquarters emailed information to Supervising Investigator Tom Blake at Los Alamitos Race Course that "Somethingaboutnick" (Urine Sample #LA43037) tested positive for the class II prohibited drug Zilpaterol after finishing first in the first race on January 12, 2019. Owner Javier Lopez was notified of the positive on January 27, 2019. Additionally, on January 27, trainer Jesus Nunez completed the forms for the split sample to be tested. University of Florida Racing Laboratory was selected as the lab to conduct the split sample testing.

On March 8, 2019, investigators received a Final Report from University of Florida Racing Laboratory, confirming that the split sample #LA43037 contained the presence of Zilpaterol (0.21 ng/ml).

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 "Somethingaboutnick" when it raced in the first race on January 12, 2019 at Los Alamitos Race Course. "Somethingaboutnick" finished first in the aforementioned race.

III.

A post-race Urine sample (labeled sample #LA43037) was taken from "Somethingaboutnick" 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 #LA43037 from "Somethingaboutnick" was uninterrupted.

V.

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

VI.

On January 27, 2019, Respondent was notified.

VII.

The Respondent, together with his trainer, elected to have a split sample sent to the University of Florida Racing Laboratory.

VIII.

On March 8, 2019, Investigator Blake received confirmation from University of Florida Racing Laboratory that urine sample #LA43037 contained Zilpaterol.

APPLICABLE RULES

CHRB rule violations listed in the complaint

- Rule 1887 (a & b) (Trainer or Owner to Insure Condition of Horse)
- Rule 1843 (a, b, & d) (Medication, Drugs and Other Substances)
- Rule 1902 (Conduct Detrimental to Horse Racing)
- Rule 1859.5 (Disqualification Upon Positive Test Finding)
- Rule 1843.1 (Prohibited Drug Substances)

DISCUSSION

The first action required by California Horse Racing Board Rule #1859.5 (Disqualification upon positive test findings) was applied to this case on March 15, 2019 by the Los Alamitos Steward's Ruling #67 disqualifying "Somethingaboutnick". After the split sample confirmed the positive of Zilpaterol, the findings were never contested.

Owner Javier Lopez did not attend the hearing and made no effort to reschedule, stating he was going to try to make it, but had some other things come up that were more pressing. In a prior statement, Mr. Lopez claimed that he sold "Somethingaboutnick" prior to the January 12th race, however, no documentation could be found to support his claim. Additionally, Mr. Lopez withdrew the winnings from his purse account, which contradicts his claim of not being the actual owner, and he has yet to return the funds to the paymaster, as advised by Steward's ruling # 67, dated March 15, 2019.

Verified by arrival and departure slips, "Somethingaboutnick" arrived at Los Alamitos the evening of January 11, 2019, the day before the race in question. Following that race, the horse was shipped back out of Los Alamitos on the evening of January 14, 2019. This indicates "Somethingaboutnick" would be considered a ship in horse. Rule #1887 states that a ship-in horse is defined as any horse entered to race that has not been in the care of a Board-licensed trainer for seven consecutive calendar days prior to the day of the race for which it is entered. Additionally, rule #1887 states that the owner of a ship-in horse is the joint-absolute insurer of, and is equally responsible for, the condition of the horse entered in a race.

Though Mr. Lopez stated he sold the runner prior to the race, as the owner of record, he must be held culpable for not taking the proper steps to ensure that the runner was transferred out of his name, after the sale, and prior to the race in question.

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. Lopez's culpability.

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.

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

- (1) *Past Medication Record of the Licensee:* Though owner Javier Lopez has only held a license since August of 2018, has had no medication violations. Mitigating.
- (2) *The Potential of the Drug to Influence a Horse's Performance:* Zilpaterol can enhance a horse's performance. Aggravating.
- (3) *The Legal Availability of the Drug:* Zilpaterol is available from any veterinarian, and is commonly found in livestock feeds; 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:* There was no evidence to indicate that Mr. Lopez knew about the administration of the Zilpaterol. Mitigating.
- (5) *Steps Taken by the Trainer to Safeguard the Horse:* This is not applicable to this case; therefore, this is considered a neutral factor.
- (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:* This is an aggravating factor as Mr. Lopez, the owner of record, did not have "Somethingaboutnick" under the direct care of a Board-licensed trainer, nor did he take the proper steps to have the horse transferred out of his name after the alleged sale.
- (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):* As this was a ship-in horse no Veterinary reports were submitted, making this a neutral factor.
- (10) *Whether there was any Suspicious Wagering Pattern on the Race:* Though "Somethingaboutnick" did win at odds of 31-1, the longest price of any runner in the race, there were no unusual wagering patterns found, making this mitigating.
- (11) *Whether the Licensed trainer was Acting under the Advice of a Licensed Veterinarian:* This is also considered a neutral factor as this does not apply to this case.

A review of the factors reveals that there are more mitigating factors than aggravating ones.

CONCLUSION

Following a formal hearing, this Board of Stewards concludes the class II prohibited drug Zilpaterol was found in Urine sample #LA43037 taken from the horse "Somethingaboutnick," the first-place finisher in the first race at Los Alamitos Race Course on January 12, 2019. This finding requires the disqualification of "Somethingaboutnick" 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). Zilpaterol is a class II drug that falls in the class "A" penalty.

PROPOSED DECISION

Given all the foregoing, this Board of Stewards makes the following recommendation in this matter:

State of California
CALIFORNIA HORSE RACING BOARD

* * *

OWNER JAVIER LOPEZ, WHO STARTED THE HORSE "SOMETHINGABOUTNICK" IN THE FIRST RACE ON JANUARY 12, 2019 AT LOS ALAMITOS RACE COURSE IS FINED FIVE THOUSAND DOLLARS (\$5,000.00)* AND SUSPENDED NINETY (90) DAYS) AND PLACED ON PROBATION FOR ONE YEAR FROM THE DATE OF THIS RULING PURSUANT TO CALIFORNIA HORSE RACING BOARD RULE #1887(a) (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) (ZILPATEROL - CLASS II) #1843.1 AND (a) (PROHIBITED DRUG SUBSTANCES).

FOR CAUSE, FORTY-FIVE (45) DAYS OF THE NINETY (90) DAY SUSPENSION ARE STAYED PROVIDED MR. LOPEZ 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. LOPEZ VIOLATES A CONDITION OF HIS PROBATION, THE ABOVE REFERENCED FORTY-FIVE (45) DAY STAY OF SUSPENSION SHALL BE LIFTED AND THE ACTUAL SUSPENSION SHALL BE IMPOSED AFTER NOTICE AND HEARING.

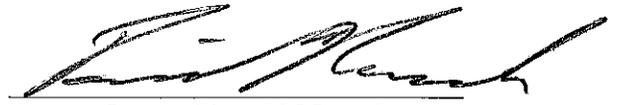
DURING THE TERM OF SUSPENSION ALL LICENSES AND LICENSE PRIVILEGES OF JAVIER LOPEZ ARE SUSPENDED AND PURSUANT TO CALIFORNIA HORSE RACING BOARD RULE #1528 (JURISDICTION OF STEWARDS TO SUSPEND OR FINE) JESUS NUNEZ IS DENIED ACCESS TO ALL PREMISES IN THIS JURISDICTION.

*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.

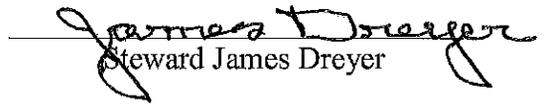
Lic# 323831 – 12/2020

Case# 19LA0019

Dated: July 7, 2019 by this Board of Stewards:



Steward David Nuesch



Steward James Dreyer



Steward Scott Chaney

2019-07-07