

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

MICHAEL J. JARVIS
CHRB License #309337

Respondent

CHRB Case #13SW0068

DECISION

The attached Proposed Decision by the Board of Stewards 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 setting the dates of suspension and payment of the fine.

IT IS SO ORDERED ON February 24, 2014.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman



Rick Baedeker
Executive Director

CALIFORNIA HORSE RACING BOARD
1010 HURLEY WAY, SUITE 300
SACRAMENTO, CA 95825
(916) 263-6000
FAX (916) 263-6042



Proposed Decision
Of the
BOARD OF STEWARDS

WATCH AND WAGER.COM, LLC

January 18, 2014

CHRB
VS.
Michael J. Jarvis
Respondent
Case #13SW0068

This matter came for hearing before Stewards Grant Baker, Will Meyers and Wayne Oke in the Cal Expo steward's office on Thursday, December 19, 2013.

Trainer Michael J. Jarvis was charged in Complaint 13SW00068 with violations of California Horse Racing Board Rule 1843.6 (Total Carbon Dioxide Testing), Rule 1887 (a) Trainer to Insure Condition of Horse and Rule 1859.5 (Disqualification Upon Positive Test).

Present at the hearing was the respondent Trainer Mike Jarvis and his witness Owner Glenn Bratcher. Respondent Jarvis was not represented by counsel. Also present was California Horse Racing Board (CHRB) Investigator Duane Tadlock. CHRB employee Deborah Mendricks was also present as an observer. CHRB Investigator Mike Bridges (observer) was present for a portion of the proceedings. Wendy Frazier C.S.R. (Fraizer Reporting) transcribed the proceedings. Oral and documentary evidence was admitted.

APPLICABLE REGULATIONS

California Horse Racing Board Rule 1843.6 (Total Carbon Dioxide Testing):

(a) At the direction of the Equine Medical Director, the stewards or the official veterinarian, a veterinarian licensed by the Board or a registered veterinary technician licensed by the Board may collect blood sample(s) from a horse for the purpose of testing for a total carbon dioxide (TCO²) concentrations. Such blood sample(s) shall be collected under the provision of Rule 1859 of this article, and may be collected pre-race or post-race.

(1) The owner or trainer of a horse selected for testing may request that a duplicate sample be taken. Such request shall be made prior to the collection of the official sample. The costs related to obtaining, handling, shipping and analyzing the duplicate sample shall be the responsibility of the owner or trainer who requested such sample.

(2) If the Board in its discretion determines the duplicate sample cannot be analyzed within five days after the sample is collected, the finding of the official sample shall be final.

(b) Any horse on a facility under the jurisdiction of the Board may be selected by the Equine Medical Director, the stewards or the official veterinarian for TCO² testing.

(c) Any owner, trainer, or other person responsible for a horse, who refuses or fails to permit the taking of test sample(s) from such horse shall be deemed in violation of Rule 1930 of this division and shall have the horse declared ineligible to race by the stewards.

(d) TCO² levels in the blood serum or plasma shall not exceed:

(1) 37.0 millimoles per liter of serum or plasma.

(2) TCO² levels in excess of 37.0 millimoles shall be considered to a Class three-medication violation for administrative purposes.

(e) The provisions of Rule 1859.25 of this article shall not apply to blood sample(s) collected for TCO² testing.

California Horse Racing Board Rule 1887 (A) (Trainer to Insure Condition of Horse):

(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.

California Horse Racing Board Rule 1859.5 (Disqualification Upon Positive Test):

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.

BACKGROUND

Trainer Michael J. Jarvis was the trainer of record for the seven (7) year old mare "Gliding Boheme" who finished fourth in the fifth race at Cal Expo (Sacramento, CA) on November 2, 2013. This was a standardbred (harness) racing meet. On November 7, 2013 Dr. Scott Stanley (Professor, Ken Maddy Laboratory, UC Davis) informed the California Horse Racing Board that pre-race blood sample TC302090 taken on November 2, 2013 was found to contain 38.0 millimoles per liter of Total Carbon Dioxide (TCO²). This blood sample corresponded with the horse "Gliding Boheme." On November 8, 2013 CHRB Investigator Carol Nolan telephoned Trainer Mike Jarvis and informed him that the "Gliding Boheme" pre-race TCO² blood test taken on November 2, 2013 contained 38.0 millimoles per liter which exceeds the regulatory level allowed. Trainer Mike Jarvis did not request a split sample to be taken prior to the pre-race blood test that was administered to 'Gliding Boheme' that evening.

INDEX OF EXHIBITS

State Exhibit

1. CHRB Non Represented Hearing Questionnaire (CHRB-Form 205A)
2. CHRB Complaint Case No. 13SW0068 (18 pages)

Respondent

No Exhibits

FACTUAL FINDINGS

I.

California Horse Racing Board (CHRB) Investigator's Duane Tadlock and Carol Ann Nolan prepared an eighteen (18) page complaint packet (Case No. 13SW0068) for this matter. Investigator Tadlock presented this case at live hearing on behalf of the CHRB on December 19, 2013. He entered the entire complaint (CHRB Exhibit #1) onto the record as documentary evidence.

II.

This hearing for Michael J. Jarvis was originally scheduled for November 30, 2013. On November 29, 2013 (one day prior to scheduled hearing) Trainer Jarvis appeared in the stewards office in order to request a continuance for the scheduled November 30th date. Jarvis stated he was requesting a continuance in order to obtain time to retain counsel in this matter.

III.

Trainer Mike Jarvis was issued a 'Notice to Appear' in a timely fashion. He was advised of his rights under the 'Administrative Procedures Act.' He agreed to proceed at hearing (December 19) without counsel.

IV.

Trainer Michael Jarvis is sixty two (62) years old and has held his California Trainer's license since April 2013.

V.

Michael Jarvis was the trainer of record for the horse "Gliding Boheme" (7 year old mare) who competed in the fifth race on November 2, 2013, finishing fourth.

VI.

'Gliding Boheme' was pre race blood tested. Her blood sample was assigned #TC302090.

VII.

On November 2, 2013 Dr. Scott Stanley (U.C. Davis Maddy Laboratories) reported sample #TC302090 contained 38.0 millimoles per liter of Total Carbon Dioxide (TCO²) exceeding the regulatory limit. For administrative purposes this is considered a Class 3 medication violation.

VIII.

CHRB Investigator Duane Tadlock assigned the disqualification portion (CHRB Rule 1859.5) of this hearing a Case No of 13SW0078. Hearing testimony indicated the owner was notified of this proceeding. The stewards subsequently disqualified 'Gliding Boheme' from all purse monies earned in the fifth race on November 2, 2013. This disqualification is reflected in Watch and Wager.com Inc. Ruling #16 dated December 20, 2013.

IX.

Trainer Mike Jarvis testified at hearing. He stated he felt the high TCO² level in this matter was the result of a feed supplement he purchased at the 'Red Mile' racetrack in Lexington, Kentucky.

X.

The feed supplement purchased was 'Yoder's Horse Powder.' Trainer Jarvis told the stewards he purchased the supplement from an unknown "Amish man." Trainer Jarvis did not know if this person was licensed.

XI.

CHRB Investigator Tadlock interviewed Trainer Jarvis, prior to hearing, on November 9, 2013 and Jarvis stated he obtained "Yoder's Horse Powder" because 'Gliding Boheme' had mucous which was affecting her breathing.

XII.

Trainer Jarvis did not speak to any veterinarian (private or regulatory) with regards to the proper use of the aforementioned 'Yoder's Horse Powder.'

XIII.

Trainer Jarvis stated he gave 'Gliding Boheme' 'Yoder's Horse Powder' for three weeks. He also said he gave her (Gliding Boheme) two scoops at 3:00PM on the day of the race. Jarvis stated "See, I fed her too late, you know what I mean?"

XIV.

Trainer Mike Jarvis brought one witness to the hearing; Owner Glenn Bratcher. Trainer Jarvis did not present any documents at hearing.

XV.

On November 14, 2013 CHRB Investigator Duane Tadlock and Carol Ann Nolan conducted a barn search of Trainer Mike Jarvis' barn. The search had a negative result.

XVI.

CHRB Investigator Duane Tadlock told the stewards that the CHRB was recommending Mike Jarvis receive a fifteen hundred (\$1500) dollar fine and a fifteen (15) day suspension as a penalty for violation of the aforementioned rule violations.

DISCUSSION

The Cal Expo stewards disqualified 'Gliding Boheme' from the fifth race on November 2, 2013 at Cal Expo California per CHRB Rule #1859.5 (Disqualification Upon Positive Test). This ruling (#16) was issued on December 20, 2013 under separate Case No: 13SW0078.

California Horse Racing Board (CHRB) Rule 1843.6 (Total Carbon Dioxide Testing) states TCO² levels shall not exceed 37.0 millimoles per liter of serum of plasma. It also state TCO² levels in excess of 37.0 millimoles shall be considered a Class 3 medication violation.

Trainer Mike Jarvis did not contest the results of official blood sample #TC302090 taken from his horse "Gliding Boheme" on November 2, 2013 at Cal Expo, CA. Jarvis told CHRB investigators on November 9, 2013 that he purchased 'Yoder's Horse Powder' from an "Amish guy" in Lexington, KY. On this day (Nov. 9) Jarvis told investigators he noticed the feed supplement (Yoder's Horse Powder) had bicarbonate in it. Jarvis also stated he administered this supplement to 'Gliding Boheme' for approximately three (3) weeks before the high TCO² level from the race on November 2, 2013, Jarvis told the stewards that he was attempting to clear up a 'mucous problem' that was affecting this horse's breathing.

During the formal hearing CHRB Investigator Tadlock told the stewards Dr. Arthur (CHRB Equine Medical Director Rick Arthur) said that the substance (Yoder's Horse Powder) could have caused the TCO² overage. The stewards in this proceeding don't know for sure what caused the overage in the horse 'Gliding Boheme' but this feed supplement received the most attention during the formal hearing and proceeding investigation.

Prior to finishing fourth on November 2, 2013 the previous three (3) race lines of Gliding Boheme in the official program read as follows:

- a. 10/26/13 Cal Expo claiming 3,000 Scratched
- b. 10/19/13 Cal Expo claiming 3,000 Finished 8th
- c. 9/21/13 Lexington KY. claiming 3,000 Scratched

This horse had only raced once in over six (6) weeks. This would be considered a significant amount of time between races in the world of harness racing. This was a race (Nov. 2) where you had a mare (Gliding Boheme) racing against several male rivals. The race in question here did not seem like a sensible wagering opportunity for respondent nor was there any testimony/evidence that gambling was 'tied in' with the race at the forefront of this case. (5th Race – November 2, 2013)

Mike Jarvis did not know the name of the person he bought the feed supplement from in Kentucky in October 2013. He did know the name of the company that person worked for. At the hearing Trainer Jarvis did not know the last name of his private veterinarian at Cal Expo. He never queried any veterinarian (private or regulatory) about the use of 'Yoder's Horse Powder.' In the CHRB Report of Investigation in this matter, Investigator Tadlock writes 'Jarvis was told to give a horse one scoop a day and two scoops on race days.' At the live hearing Jarvis stated "But instead of giving her one scoop a day. I give her two, you see." Jarvis also stated "But I did feed her at 3:00 that day with two scoops." The day that Jarvis was referencing was 'race day.'

Witness Glenn Bratcher (Owner) testified that he and Jarvis purchased 'the powder' in Lexington KY on October 3, 2013. He said he noticed "Grand Circuit guys walking buying this stuff like it was free." The aforementioned stuff was 'Yoder's Horse Powder.' Grand Circuit guys, the stewards believe, refers to trainers that condition top quality/performing standardbred bred horses throughout the United States. Witness Bratcher's testimony indicated that this product could be helpful for a horse's immune system. Testimony indicated Respondent Jarvis and Witness Bratcher went into a tack shop in Kentucky actually looking for some 'leg paint' when a tack shop salesman bragged about the product 'Yoder's Horse Powder.' Jarvis and Bratcher 'went for' the sales pitch and took the substance back to California with them.

Respondent Jarvis and Witness Bratcher were candid at the live hearing and the stewards felt they answered all questions truthfully and to the best of their ability.

Rule 1843.3 Penalties for Medication Violations.

The Stewards considered the following factors in this case:

(1) *Past Medication Record of the Licensee:* This was Jarvis' first Class 1, 2, or 3 violation in California. However, he had only been a Trainer in California a little under eight (8) months and he trained a small eight (8) horse stable. #1 is somewhat **mitigating**.

(2) *The Potential of the Drug to Influence a Horse's Performance:* The stewards feel high Total Carbon Dioxide levels (TCO²) in a racehorse can extremely improve a horse's performance. This is an **aggravating** factor.

(3) *The Legal Availability of the Drug*: Whether it's 'Yoder's Horse Powder' (mentioned at hearing) or baking soda the accessibility of products that could lead to a TCO² overage is not difficult. **Mitigating** 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 difficult to determine if Respondent Jarvis knew the product in question led to high TCO² levels. #4 would lend itself to a **mid-level** penalty.

(5) *Steps Taken by the Trainer to Safeguard the Horse*: Investigator Tadlock testified Respondent Jarvis 'did not notice or realize' that the alleged substance in this matter contained the ingredient Calcium Carbonate. Reading the labels of horse products is important. **Aggravating** 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*: There was no testimony/evidence on this factor. This would contribute to a **mid-level** penalty.

(7) *Probability of Environmental Contamination or Inadvertent Exposure Due to Human Drug Use or Other Factors*: There was nothing at the live hearing that would apply to this. This would contribute to **mid-level** penalty.

(8) *Purse of the Race*: \$2,200.

The purse was \$100 above the smallest purse offered at Cal Expo. **Mitigating** factor.

(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)*: There was no indication of any prescription which would lead to high TCO² levels. This would contribute to **mid-level** penalty.

(10) *Whether there was any Suspicious Wagering Pattern on the Race*: There was no evidence/testimony that suspicious wagering took place in this matter. This is a **mitigating** factor.

(11) *Whether the Licensed Trainer was Acting under the Advice of a Licensed Veterinarian*: Respondent Jarvis did not act on the advice of veterinarian prior to purchasing the product which allegedly led to overage in this matter. This is a **aggravating** factor.

A review of the eleven (11) factors listed in CHRB Rule 1843.3:

Aggravating: 3

Mitigating: 4

Mid-Level: 4

CONCLUSION

The license history of Trainer Mike Jarvis indicates he was issued a California Horse Racing Board (CHRB) trainer's license for the first time in March of 2013. Jarvis stated he has had a trainer's license (other jurisdiction) since he was sixteen (16) years of age. That was forty six (46) years ago. Based on documents presented at hearing this is impossible to verify. No evidence, documents or evidence presented at hearing gave the stewards any insight as to Jarvis's adherence to medication statutes enforced in other states. What the stewards do know is that within seven (7) months of training in California Trainer Jarvis has alleged violation of CHRB 1843.6 (Total Carbon Dioxide Testing) that he is being charged with.

As for the intent of Jarvis, it was difficult to discern specifically. During questioning Jarvis indicated that a runny nose/mucous concern was the reason for the purchase of 'Yoder's Horse Powder.' The testimony of Jarvis witness, Glenn Bratcher, appeared to counter that somewhat. Bratcher stated "I seen at least three (3) or four (4) of these containers (Yoder's Horse Powder) go out that day when these Grand Circuit Guys were walking in." This testimony indicated to the stewards that Jarvis and Witness Bratcher were simply looking for a product that the local 'hot trainers' were using before returning to California. Either way, little or no research by Trainer Jarvis was made prior to administration of this powder.

The stewards unanimously determine that by a preponderance of the evidence, Trainer Michael J. Jarvis violated California Horse Racing Board Rules #1843.6 (Total Carbon Dioxide Testing), Rule 1887 (a) (Trainer to Insure Condition of Horse) and Rule 1859.5 (Disqualification Upon Positive Test).

PROPOSED DECISION

Having held a hearing on December 19, 2013 in Sacramento, CA and due deliberation, the Board of Stewards makes the following recommendation in this matter:

State of California

CALIFORNIA HORSE RACING BOARD

* * *

Trainer Michael J. Jarvis, who started the horse 'Gliding Boheme' in the fifth race on November 2, 2013 at Cal Expo CA, is suspended fifteen (15) days, and fined one thousand five hundred dollars (\$1,500.00)* pursuant to California Horse Racing Board Rule #1887 (A) (Trainer to Insure Condition of Horse) and Rule 1859.5 (Disqualification Upon Positive Test) for violation of California Horse Racing Board Rule #1843.6 (Total Carbon Dioxide Testing – 38.0 millimoles per liter).

The days of suspension shall be _____ thru _____.

During the term of suspension, all licenses and license privileges of Michael J. Jarvis are suspended and pursuant to California Horse Racing Board Rule #1528 (Jurisdiction of Stewards) subject is denied access to all premises in this jurisdiction.

Trainer Lic#: 309337-08/15

Owner Lic#: 234673-08/15

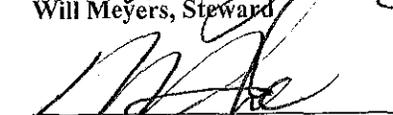
Driver Lic#: 30884-08/15

Case#: 13SW0068

Dated January 18, 2014 by this Board of Stewards:


Grant Baker, Steward


Will Meyers, Steward


Michael W. "Wayne" Oke, Steward

RECEIVED
CHAS
JAN 21 2014