

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

LUIS MARISCAL
CHRB License #261658
Respondent

CHRB Case #15GG0131

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 ten thousand dollar (\$10,000.00) fine and setting the sixty (60) days of suspension.

IT IS SO ORDERED ON March 1, 2016.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman



Rick Baedeker
Executive Director

State of California
CALIFORNIA HORSE RACING BOARD
STATEMENT OF PROPOSED DECISION
of the
BOARD OF STEWARDS

Pacific Racing Association
Golden Gate Fields

February 7, 2016

IN THE MATTER OF THE
COMPLAINT/ACCUSATION
AGAINST RESPONDENTS:

CASE NO. 015GG0116
CASE NO. 15GG0131

Trainer, Adolfo Ortiz (15GG0116)
License #310667-03/2018

Owner Luis Mariscal (15GG0131)
License #261658-10/2017

INTRODUCTION

These combined cases were heard before Stewards John Herbuveaux, Darrel McHargue and Dennis Nevin at Golden Gate Fields on November 20, 2015.

Present at the hearings were respondents trainer Adolfo Ortiz, Owner Luis Elias Mariscal, California Horse Racing Board investigator Louis Quesada, California Horse Racing Board staff counsel, Phil Laird, safety steward Richard Lewis and CSR Christine Niccoli, who transcribed the proceedings.

Respondent Adolfo Ortiz was represented by attorney Brian Pitnick and respondent Luis Elias Mariscal, who was advised of his right to counsel, elected to proceed without representation.

At the hearing the parties were allowed to introduce relevant exhibits, produce witnesses for examination and cross-examination and offer argument. Documentary evidence was submitted, oral testimony was heard, the hearing was then closed and the matter deemed submitted.

BACKGROUND

Respondent Adolfo Ortiz (hereinafter Ortiz) was charged in complaint #15GG0116, filed by California Horse Racing Board (hereinafter CHRB) Investigator Louis Quesada (hereinafter Quesada) on behalf of the CHRB, with alleged violations of CHRB rules #1843 (a) (b) & (d) (Medication Drugs and Other Substances), #1843 .1 (a) (Prohibited Medication). #1844 (a) and (e) (6) (Authorized Medication).

#1887 (a) (Trainer to Insure Condition of Horse) and #1859.5 (Disqualification Upon Positive Test Finding) pursuant to the California Code of Regulations, Title 4, Division 4.

It should be noted that CHRB staff counsel Philip Laird (hereinafter Laird) requested at the outset of the hearing to amend the complaint to include CHRB rule #1485 (License Subject to Conditions and Agreements). Respondent's Counsel Brian Pitnick (hereinafter Pitnick) stipulated to the amendment without objection.

Respondent Luis Mariscal (hereinafter Mariscal) was charged in complaint #15GG031. Filed by CHRB investigator Quesada on behalf of the CHRB rules #1843 (a) (b) & (d) (Medication Drugs and Other Substances), #1843.1 9a) (Prohibited Medication), #1844 (a) and (e) (6) (Authorized Medication), #1887 (a) (Trainer to Insure condition of Horse), #1859.5 (Disqualification Upon Positive Test Finding) and #1902 (c) (Conduct Detrimental to Horse Racing). Pursuant to the California Code of Regulations Title 4, Division 4.

THE COMPLAINT AGAINST ORTIZ STATES IN PART:

"Trainer Adolfo Ortiz allowed a horse owner, Luis Elias Mariscal, to enter the Horse Snowy Gaddafi under his name at The San Joaquin County Fairgrounds in Stockton without him actually training the horse. Snowy Gaddafi finished 1st in the 3rd race in Stockton (09-12-2015) and subsequently tested positive for Clenbuterol in urine sample #F13644 at the Maddy Lab. This is a Class 3 drug with a Category B penalty".

THE COMPLAINT AGAINST LUIS MARISCAL STATES IN PART:

"Owner Luis E. Mariscal medicated/injected his horse "Snowy Gaddafi" with Clenbuterol for three days prior to racing him at The San Joaquin County Fairgrounds in Stockton. On 09/12/2015, Snowy Gaddafi finished 1st in the 3rd race at Stockton and subsequently tested positive for Clenbuterol in urine sample #F13644 at the Maddy Lab. This is a Class 3 drug with a Category B penalty".

EXHIBITS

CHRB EXHIBITS:

1. Complaint packet for trainer Adolfo Ortiz (Case #15GG00016)
2. Complaint packet for owner Luis Mariscal (Case #15GG0131)
3. Questions for licensees not represented by counsel (Luis Mariscal)
4. Transcripts from Luis Mariscal hearing (15GG0131) and Adolfo Ortiz Hearing (15GG0016)

FINDINGS OF FACT

I

On September 12, 2015 the quarter horse Snowy Gaddafi ran in and finished first in the third race at The San Joaquin County Fair, Stockton California.

II

The trainer of record for Snowy Gaddafy was Adolfo Ortiz.

III

At all relevant times herein Adolfo Ortiz was licensed by the CHRB as a trainer.

IV

The owner of record for Snowy Gaddafy was Luis Mariscal.

V

At all relevant times herein Luis Mariscal was licensed by the CHRB as an owner.

VI

Following the running of the third race at The San Joaquin county Fair on September 12, 2015, the winner Snowy Gaddafy, was taken to the test barn and provided the urine sample #F13644 that was sent to the University of California, Davis Maddy Analytical Laboratories for analysis.

VII

On September 18, 2015, Dr. Scott Stanley Chief Chemist for the Maddy Laboratories, notified the CHRB that urine sample #F13644 tested positive for the prohibited substance Clenbuterol at a level of 380 Picograms per Milliter.

VIII

Clenbuterol is listed as a Class 3 prohibited substance when found at any level in a post race urine sample taken from a quarter horse who has competed in a CHRB sanctioned race, and requires disqualification pursuant to CHRB rule #1859.5.

IX

CHRB Investigator Quesada initiated his investigation on September 26, 2015, when notified by CHRB Investigator Duane Tadlock, who was assisting split sample Customer Custodian Ms. Deborah Dugally, that urine sample #F13644 was positive for Clenbuterol.

X

The CHRB received notice the split of the urine sample (F13644) was confirmed to contain 318 + / -14 pg/ml of Clenbuterol by Industrial Laboratories Wheat Ridge, Colorado, on October 21, 2015.

XI

The Quarter Horse Snowy Gaddafy was shipped by Mariscal to the San Joaquin County Fair in Stockton from a ranch in Sunol, California.

XII

Ortiz testified he agreed to be listed as trainer of Snowy Gaddafy, even though he did not have him under his care and custody.

XIII

Ortiz further testified that he was previously penalized for a Class 3 drug violation (case #13GG0146)*

XIV

Ortiz acknowledged he is on probation for previous medication violations (Banamine) (Case# 14SW0037, #14SW0039 & #14SW0040)

XV

Ortiz also testified he had no knowledge of a Clenbuterol treatment by owner Mariscal.

XVI

Mariscal testified he treated Snowy Gaddafy with Clenbuterol that he obtained through the internet.

XVII

Mariscal further testified the Clenbuterol treatments were given on three consecutive days, approximately 28, 29 and 30 days prior to September 12, 2015.

XVIII

Mariscal testified he did not consult a veterinarian prior to treating Snowy Gaddafy with the Clenbuterol.

XIX

Mariscal acknowledged he did not inform Ortiz that Snowy Gaddafy had been treated with Clenbuterol.

XX

Mariscal has no prior violations on his CHRB license history.

XXI

Laird stated on the record the recommendation from the Executive Director was sixty (60) day suspension and Ten Thousand Dollar (\$10,000.00) fine for Mariscal.

XXII

Laird stated on the record the recommendation from the Executive Director was a sixty (60) day suspension, plus an additional fifteen (15) days for probation violation and a five thousand dollar (\$5,000.00) fine for Ortiz.

*Rule #32 issued 02-28-2014, Trainer Ortiz suspended thirty days, fined \$1,500.00 for Hydroxstanozolol, a Metabolite of Stanozolol-Class 3.

CALIFORNIA HORSE RACING BOARD RULES
California Code of Regulations, Title 4, Division 4

Alleged rule violations by Trainer Adolfo Ortiz:

1843 (a) (b) & (d)	Medication, Drugs and Other Substances
1843.1 (a)	Prohibited Drug Substances
1844 (a)	Authorized Medications
1844 (e) (6)	Authorized Medications-Clenbuterol
1859.5	Disqualification Upon Positive Test Finding
1887 (a)	Trainer to Insure Condition of Horse
1485	license Subject to conditions and Agreements

Alleged rule violations by Owner Luis Mariscal:

1843 (a) (b) & (d)	Medication Drugs and Other Substances
1843.1 (a)	Prohibited Drug Substances
1844 (a)	Authorized Medications
1844 (e) (6)	Authorized Medications-Clenbuterol
1859.5	Disqualification Upon Positive Test Finding
1887 (a)	Trainer to Insure Condition of Horse
1902 (c)	Conduct Detrimental to Horse Racing

DISCUSSION

The initial issue to be determined is whether there was a Class I, II or III medication violation necessitating a disqualification of the horse (Snowy Gaddafi) involved. The finding of Clenbuterol in urine sample #F13644 by the U.C. Davis Maddy Laboratory and confirmed by Industrial Laboratory, Wheat Ridge, Colorado is not in dispute.

Further the admission by owner Mariscal that he obtained Clenbuterol through the internet and treated Snowy Gaddafi while caring for the horse away from any CHRB sanctioned facility eliminates any doubt regarding the source of the treatment.

Of major concern is what is becoming an all too common scenario of quarter horse trainers such as Ortiz, allowing owners to have care and custody of their animals at all times, except on race day. As in this case, both the trainer and the owner share responsibility for the condition of the animal and any subsequent finding of a prohibited substance or unapproved medication.

There was no evidence or testimony presented indicating an unusual wagering pattern.

The aggravating factors with regards to Mariscal are clear by his own admissions and are mitigated only by the fact that there has been no prior disciplinary action against him by the CHRB.

There was no evidence or testimony presented indicating an unusual wagering pattern.

The aggravating factors with regards to Mariscal are clear by his own admissions and are mitigated only by the fact that there has been no prior disciplinary action against him by the CHRB.

Ortiz, on the other hand, has been previously penalized for a similar situation where an owner treated a horse off the grounds and only used the trainer's services to saddle his horse. Ortiz is still on probation for that offense.

CONCLUSION

The Stewards determined there was a violation of CHRB rule #1859.5 and issued the following ruling #29 on November 22, 2015:

#29

Acting on a report from the University of California at Davis Maddy Laboratories, the official Laboratory for the California Horse Racing Board, that the post race urine sample #F13644 taken from the horse Snowy Gaddafy, winner of the third race at The San Joaquin County Fair (Stockton) on September 12, 2015 contained the prohibited substance Clenbuterol (Class 3), it is hereby ordered that Snowy Gaddafy be disqualified from all purse monies earned and deemed unplaced in accordance with California Horse Racing Board rule #1859.5 (Disqualification Upon Positive Test Finding).

It is further ordered that all purse monies (\$4,450.00) earned or awarded to owner Cuadra Mariscal (Luis Mariscal) and trainer Adolfo Ortiz and jockey Irving Orozco be returned to Paymaster of Purses on or before December 26, 2015 for redistribution pursuant to California Horse Racing Board rule #1760 (Purse Award or Prize to be Withheld).

The revised order of finish is as follows:

- 1st Sparkin One
- 2nd Primercartel
- 3rd First Regal Choice
- 4th Feature Dashnon
- 5th Dontthroliemystyle
- 6th Z Best Contender
- 7th Earthquakesnlightnin
- 8th Rarely Occurs
- 9th Eddies Jazzin

PROPOSED DECISION

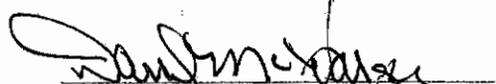
Trainer Adolfo Ortiz, who started the horse Snowy Gaddafy, winner of the third race at The San Joaquin county Fair (Stockton) on September 12, 2015, is hereby suspended seventy-five (75) days and fined five thousand dollars (\$5,000.00) pursuant to California Horse Racing Board #1887 (a) (Trainer to Insure Condition of Horse) for violation of California Horse Racing Board rules #1843 (a) (b) & (d)

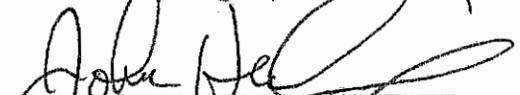
During the term of suspension all licenses and license privileges of Adolfo Ortiz are suspended and pursuant to California Horse Racing Board rule #1528 (Jurisdiction of Stewards) subject is denied access to all premises in the jurisdiction.

Owner Luis Mariscal, who owned the horse snowy Gaddafi, winner of the third race at The San Joaquin county Fair (Stockton) on September 12, 2015, is hereby suspended sixty (60) days and fined the sum of ten thousand dollars (\$10,000.00) pursuant to California Horse Racing Board rule #1887 (a) (Trainer to Insure condition of Horse) for violation of California Horse Racing Board rules #1843 (a) (b) & (d) (Medication, Drugs and Other Substances, #1843.1 (a) (Prohibited Medication-Clenbuterol [Class 3]), #1844 (a) & (e) (6) (Authorized Medication) and #1902 (c) (Conduct Detrimental to Horse Racing)

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


Dennis Nevin, Steward


Darrel McHargue, Steward


John Herbuveaux, Steward

RECEIVED
CHRB
2016 FEB 16 AM 7:47