

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against:

ADOLFO C. ORTIZ
CHRB License #310667
Respondent

CHRB Case #13GG0146

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

State of California

CALIFORNIA HORSE RACING BOARD

PROPOSED DECISION
of the
BOARD OF STEWARDS

Pacific Racing Association
Golden Gate Fields

DATED JANUARY 19, 2014

IN THE MATTER OF:

California Horse Racing Board

Vs.

Trainer Adolfo C. Ortiz

)
)
)
)
)
)
)

CASE # 13GG0146

INTRODUCTION

This matter came for hearing at Golden Gate Fields before a Board of Stewards consisting of Mr. John Herbuveaux, Mr. Darrel McHargue and Mr. Dennis Nevin on December 28, 2013.

Present at the hearing was the Respondent, Trainer Adolfo C. Ortiz and California Horse Racing Board investigator Mike Bridges who presented the case on behalf of the California Horse Racing Board. The proceedings were recorded by Christine Niccoli, C.S.R.

Respondent was advised of his right to be represented by counsel. Mr. Ortiz waived that right and stated he was prepared to go forward without counsel.

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

The respondent, Adolfo C. Ortiz (hereinafter Ortiz) was charged in complaint #13GG0146, filed by CHRB Investigator Mike Bridges (hereinafter Bridges) on behalf of the California Horse Racing Board (hereinafter Board) with alleged violations of Board rules #1843 (a) & (d) (Medication Drugs and Other Substances), #1844 (c)(10) (Authorized Medication), #1859.5 (Disqualification Upon Positive Test Finding) and #1887 (Trainer to Insure Condition of Horse) of the California Code of Regulations, Title 4, Division 4.

The Complaint states in part:

"The official urine sample #F10961 taken on October 12, 2013 at Big Fresno Fair was reported by Scott Stanley of U.C. Davis Laboratories to contain 16-hydroxystanozolol (3.4ng/ml) a metabolite of stanozolol. This sample was obtained from the horse Shot Of Fury DH (sic) which ran in the third race at Big Fresno Fair finishing 1st. The trainer of record is Adolfo C. Ortiz. Stanozolol is a Class 3, Penalty B prohibited drug substance."

The owner of record of the horse A Shot of Fury DH is Jesus Ramon Arellanes, Jr. Mr. Arellanes (hereinafter Arellanes) did not appear at this hearing even though Bridges sent Arellanes notification of the hearing by certified mail. Arellanes, as owner, is not required to attend the hearing but any purse monies earned by A Shot of Fury DH are at risk of redistribution should the presence of Stanozolol in the post race urine sample, #F10961, be confirmed.

EXHIBITS

CHRB EXHIBITS:

- 1 Complaint #13GG0146
- 2 Owner's Notification for Mr. Jesus Ramon Arellanes
- 3 Questions for licensees not represented by counsel at a hearing before the Board of Stewards.
- 4 Data Packet from University of California, Davis Equine Analytical Laboratory for urine sample #F10910.
- 5 Board Directive 04-13, dated 10/29/2013

FINDINGS OF FACT

I

The horse A Shot of Fury DH started in and won the third race at the Fresno District Fair, in Fresno, California on October 12, 2013.

II

The trainer of record for the horse A Shot of Fury DH was Adolfo C. Ortiz.

III

Ortiz has been licensed as a trainer by the Board since August of 2012.

IV

The owner of A Shot of Fury DH was and is Jesus R. Arellanes Jr.

V

Following the running of the third race on October 12, 2013 the horse A Shot of Fury DH was taken to the Test Barn located at the Fresno District Fair and urine sample #F10961 was obtained from the horse.

VI

Urine sample #F10961 was sent for analysis to the Maddy Equine Laboratory at the University of California, Davis, the official testing laboratory for the Board.

VII

On October 25, 2013 the Maddy Laboratory reported to the Board that urine sample #F10961 contained 3.4 ng/ml of 16-Hydroxystanozolol, a metabolite of Stanozolol.

VIII

On October 25, 2013 the Board contacted Investigator Bridges concerning the positive test finding which had been determined to be from the horse A Shot of Fury DH.

IX

On October 27, 2013 Bridges telephonically contacted Ortiz, the trainer of record for A Shot of Fury DH, concerning the positive test results on sample #F10961.

X

Bridges stated that Ortiz told him that Ortiz first saw the horse A Shot of Fury DH approximately three weeks before the Fresno race when Arellanes shipped the horse in to Stockton for a workout.

XI

Ortiz told Bridges that Arellanes took A Shot of Fury DH back to Arellanes ranch after that workout and Ortiz did not see the horse again until it arrived on the grounds of the Fresno District fair approximately twenty-four hours prior to the race on October 12, 2013.

XII

Ortiz related to Bridges that Arellanes does most of the training on this horse.

XIII

Ortiz told Bridges that he doesn't medicate horses himself as he uses the services of a veterinarian. At Fresno he used Dr. Herbert Wright as his veterinarian.

XIV

Ortiz stated to Bridges that he did not administer the Stanazolol to A Shot of Fury DH.

XV

Ortiz told Bridges that the owner would pay the fine because Ortiz was just doing Arellanes a favor by running the horse for him.

XVI

Beginning on October 27, 2013 Bridges attempted on several occasions to contact owner Arellanes concerning the positive test results on sample #F10961 but was unsuccessful until November 24, 2013.

XVII

Arellanes stated to Bridges that A Shot of Fury DH was gelded approximately two months before the race in October and may have received some medication at that time but Arellanes could not be more specific.

XVIII

Arellanes told Bridges that Mario Loza trains his horses at Los Alamitos but Loza was not going to race on the Fairs so Arellanes asked Ortiz if Ortiz would run A Shot of Fury DH under Ortiz' name.

XIX

Ortiz testified that he was contacted by Arellanes at Pleasanton about Arellanes running a horse under Ortiz' name. Ortiz responded at that time that he had to think about it before giving Arellanes an answer.

XX

Later, at Stockton, Ortiz allowed Arellanes to put A Shot of Fury under Ortiz' name so the horse could get workouts to be able to qualify for a race at Fresno.

XXI

Arellanes brought the horse to Stockton from his ranch on two occasions, September 17 and September 28, 2013, in order to work the horse to qualify for Fresno. On both these occasions Ortiz allowed A Shot of Fury DH to be listed under his name as trainer.

XXII

After each workout A Shot of Fury DH was loaded in a trailer and shipped back to Arellanes' ranch.

XXIII

Ortiz never had physical control of A Shot of Fury DH until the horse arrived at Fresno approximately twenty-four hours prior to the race on October 12, 2013.

XXIV

Neither Ortiz nor Arellanes requested that an independent laboratory test the split sample.

XXV

Ortiz did not contest the chain of custody from the time sample #F10961 was collected from A Shot of Fury DH at Fresno on October 12, 2013 until it reached the Maddy Laboratory at Davis.

XXVI

Ortiz did not contest the test results from Sample #F10961 provided by the Maddy Laboratory at the University of California, Davis.

XXVII

Ortiz testified that he was the person who actually entered A Shot of Fury in the third race for October 12, 2013.

XXVIII

Ortiz stated that he received ten percent (10%) of the winner's share of the purse for running A Shot of Fury DH under his name as trainer.

XXIX

Ortiz said he did not place a wager on A Shot of Fury DH.

XXX

Ortiz confirmed that he ran another horse under his name as trainer in the third race at Fresno on October 12, 2013. That horse, named Botticelli, was owned by Arturo Becerra and finished in eighth place.

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

California Horse Racing Board rule 1843 states:

MEDICATION, DRUGS AND OTHER SUBSTANCES.

It shall be the intent of these rules to protect the integrity of horse racing, to guard the health of the horse, and to safeguard the interests of the public and the racing participants through the prohibition or control of all drugs, medications and drug substances foreign to the horse. In this context:

(a) No horse participating in a race shall carry in its body any drug substance or its metabolites or analogues, foreign to the horse except as hereinafter expressly provided.

(b) No drug substance shall be administered to a horse which is entered to compete in a race to be run in this State except for approved and authorized drug substances as provided in these rules.

(c) No person other than a licensed veterinarian or animal health technician shall have in his/her possession any drug substance which can be administered to a horse, except such drug substance prescribed by a licensed veterinarian for a specific existing condition of a horse and which is properly labeled.

(d) A finding by an official chemist that a test sample taken from a horse contains a drug substance or its metabolites or analogues which has not been approved by the Board, or a finding of more than one approved non-steroidal, anti-inflammatory drug substance or a finding of a drug substance in excess of the limits established by the Board for its use shall be prima facie evidence that the trainer and his/her agents responsible for the care of the horse has/have been negligent in the care of the horse and is prima facie evidence that the drug substance has been administered the horse.

California Horse Racing Board rule 1844 states:

AUTHORIZED MEDICATION

Consistent with the intent of these rules, drug substances and medications authorized by the Board for use may be administered to safeguard the health of the horse entered to race provided that:

- (a) No person shall administer a drug substance to any horse entered to race except upon authorization of the official veterinarian in conformance with these rules.
- (b) No drug substance, other than authorized bleeder medication, shall be administered to a horse entered to race within 24 hours of the race in which entered.
- (c) Not more than one approved non-steroidal anti-inflammatory drug substance (NSAID) may be administered to a horse that is entered to race and shall be only one of the following authorized drug substances:
 - (1) Phenylbutazone in a dosage amount that the test sample shall contain not more than 2 micrograms of the drug substance per milliliter of blood plasma or serum.
 - (2) Flunixin in a dosage amount that the test sample shall contain not more than 20 nanograms of the drug substance per milliliter of blood plasma or serum.
 - (3) Ketoprofen in a dosage amount that the test sample shall contain not more than 10 nanograms of the drug substance per milliliter of blood plasma or serum.
 - (4) Metabolites or analogues of approved NSAIDs may be present in post race test samples.
- (d) If the official chemist reports that a blood test sample contains an authorized NSAID in excess of the limit for that drug substance under this rule, the official veterinarian shall, in conjunction with the veterinarian who administered or prescribed the authorized drug substance, establish a dosage amount or time of administration of the drug substance that will comply with the limits under this rule; or the official veterinarian may, if in his/her judgment no such reduced dosage amount or amendment to time of administration will result in a test sample level within the limits of this rule, withdraw authorization for the use of any one NSAID.
- (e) Official urine test samples may contain one of the following drug substances, their metabolites or analogues, in an amount that does not exceed the specified levels:
 - (1) Acepromazine; 25 nanograms per milliliter
 - (2) Mepivacaine; 10 nanograms per milliliter
 - (3) Promazine; 25 nanograms per milliliter
 - (4) Albuterol; 1 nanogram per milliliter
 - (5) Atropine; 10 nanograms per milliliter
 - (6) Benzocaine; 50 nanograms per milliliter
 - (7) Procaine; 50 nanograms per milliliter
 - (8) Salicylates; 750 micrograms per milliliter
 - (9) Clenbuterol; 5 nanograms per milliliter
 - (10) Stanazolol; 1 nanogram per milliliter
 - (11) Nandrolone; 1 nanogram per milliliter for geldings, fillies and mares; 45 nanograms for males other than geldings.
 - (12) Boldenone; 15 nanograms per milliliter in males other than geldings
 - (13) Testosterone; 20 nanograms per milliliter in geldings
 - (A) Testosterone at any level in males other than geldings is not a violation of this regulation.
 - (14) Testosterone; 55 nanograms per milliliter in fillies or mares.
- (f) Official blood test samples may contain clenbuterol in an amount not to exceed 25 picograms per per milliliter of serum or plasma.
- (g) Official blood test samples shall not contain any of the drug substances, or their metabolites or analogues listed in subsection (e)(1) (8), and (e)(10)-(14).
- (h) Procaine, following administration of procaine penicillin, is an authorized medication provided:
 - (1) Official blood test samples shall not contain any procaine, or its metabolites or analogues in excess of 25 nanograms per milliliter.
 - (2) all procaine penicillin administrations have been reported pursuant to rule 1842 of this division.
 - (3) procaine penicillin was not administered after entry to a race,
 - (4) the horse was under surveillance for a minimum of six hours prior to racing
- (i) All expenses related to surveillance and testing for procaine under subsection (h) of this regulation shall be paid by the owner of the horse.

California Horse Racing Board rule 1859.5 states:

DISQUALIFICATION UPON POSITIVE TEST FINDING

A finding by the stewards that an official test sample from a horse participating in any race contained a prohibited 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 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.

California Horse Racing Board rule 1887(a) states:

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 the urine or blood test samples or other tests, prove positive showing the presence of any prohibited drug substance defined in 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.

DISCUSSION

The first item on the agenda is to determine whether there is sufficient evidence in the record to determine there was a violation of Board rule #1843 (a) & (d) (Medication, Drugs and Other Substances). The laboratory reports from U.C. Davis indicate that urine sample #F10961, taken from the horse A Shot of Fury DH, showed the presence of 16-Hydroxystanozolol at 3.4 ng/ml which is above the threshold level of one (1) nanogram per milliliter permitted by rule #1844 (Authorized Medication). No evidence was introduced to contest the test results therefore there is prima facie evidence that Ortiz is in violation of Board rule #1843 (a) & (d).

The second order of business is whether Ortiz is culpable under Board rule #1887 (Trainer to Insure Condition of Horse) because of those positive test results.

Ortiz knowingly allowed himself to be listed as the trainer of record for the horse A Shot of Fury DH when the horse competed in and won the third race at the Fresno District Fair on October 12, 2013, even though he did not have physical care and custody of the horse until it arrived on the grounds in Fresno approximately twenty-four hours prior to the race. Knowingly is the key word under consideration.

Ortiz entered the horse, after conversations with the owner Jesus Arellanes, approximately three days prior to the race. Ortiz knew the horse was not on the grounds at Fresno at that time but entered A Shot of Fury DH for reasons that are clear only to him. Ortiz had been licensed as a trainer in California for only a short time before this incident so he may be eligible to receive the benefit of doubt in that respect. But whether he adopted to take the risk out of ignorance of the rules or whether he took a calculated gamble and lost he is still fully responsible for the consequences of his actions.

Rule #1887 is very explicit that the trainer is the absolute insurer of and responsible for the condition of a horse in a race, "...*regardless of the acts of third parties*" (emphasis added). Although Ortiz testified that he did not directly administer the Stanozolol to A Shot of Fury DH he was not in a position to protect the horse from those who may have done so because he delegated that responsibility to Arellanes.

Rule #1887 which holds the trainer responsible for the condition of a horse also states in part "...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."

While Arellanes did not testify at this hearing and was rather evasive to Investigator Bridges who was trying to get to the truth of the matter, the Stewards feel that he too could share some of the culpability and responsibility for the test results because it was he who had more care and custody of the horse prior to the race than Ortiz. Arellanes was not cited in that regard.

With respect to mitigating circumstances and aggravating factors in this matter it must be noted that Ortiz, while having a clean history where medication violations are concerned, has only been licensed as a trainer a very short time. Ortiz admitted he is still in a learning curve as far as being a licensed trainer. He also stated that he now knows that his actions in this instance were wrong and he will not make the same mistake again.

On the other hand, to allow Ortiz' recent initiation into the ranks of trainers licensed by the Board to work to his benefit is an insult to those who have plied their trade for years without a medication violation. Ortiz knowingly delegated his responsibility as a trainer by allowing Arellanes to have care and custody of A Shot of Fury at his ranch not only prior to the horse's workouts but also prior to the race. Ortiz may not have administered the prohibited medication but his actions were severely negligent in preventing such administration and in insuring that the horse raced without any prohibited substances in its system.

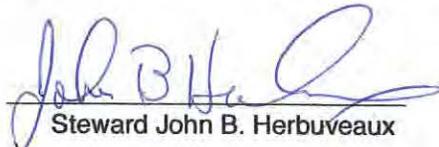
The Board of Stewards, following the hearing on December 28, 2013, determined that urine sample #F10961 did contain 16-Hydroxystanozolol, a metabolite of Stanozolol, at a level of 3.4 ng/ml which constitutes a violation of rule #1844 (c)(10) and pursuant to rule #1859.5 (Disqualification Upon Positive Test Finding) requires the disqualification of the horse A Shot of Fury DH from the third race at the Fresno District Fair on October 12, 2013. Said disqualification was effected through Pacific Racing Association ruling #6, dated December 29, 2013.

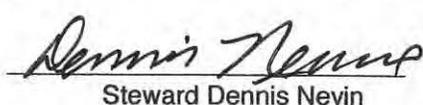
PROPOSED DECISION

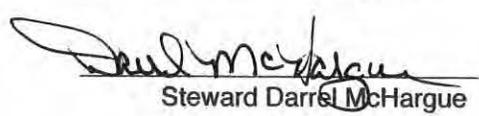
Trainer Adolfo C. Ortiz, who started the horse A Shot of Fury DH, winner of the third race at the Fresno District Fair on October 12, 2013, is hereby suspended Thirty (30) Days and fined the sum of Fifteen Hundred Dollars (\$1500.00) pursuant to California Horse Racing Board rule #1887 (Trainer to Insure Condition of Horse) for violation of California Horse Racing Board rule #1843 (a) & (d) (Medication, Drugs and Other Substances; Prohibited Substance, 16-Hydroxystanozolol, a metabolite of Stanozolol [Class 3]).

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

RECEIVED
CALIFORNIA HORSE RACING BOARD
FRESNO DISTRICT FAIR
OCT 19 2014


Steward John B. Herbuveaux


Steward Dennis Nevin


Steward Darrel McHargue

Dated: 1-19-14