

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

**In the Matter of the Complaint
Against:**

Case No. SAC 14-0012

**OWNER JOSE OLIVAS
CHRB License # 292727
Respondent**

**DECISION AFTER
NON-ADOPTION OF PROPOSED DECISION**

This Matter was originally heard by the Board of Stewards, Los Alamitos Race Course on February 14, 2014, designated as Case No. 14LA0026. On March 8, 2014, the Board of Stewards issued a Proposed Decision which suspended Licensee Jose Olivas for forty five (45) days. In addition, the Proposed Decision provided that the horse of Licensee Olivas, "TR Specialty", was to be disqualified, be required to pass a California Horse Racing Board (CHRB) approved examination pursuant to CHRB Rule No. 1846 before becoming eligible to be entered and be subject to drug testing at the Licensee Olivas' expense, and be negative for prohibited drug substances as defined by CHRB Rule No. 1843.1.

By Notice of Decision Not to Adopt Proposed Decision and Order Directing Preparation of the Record, dated March 25, 2014, the California Horse Racing Board rejected the Proposed Decision and elected itself to decide the Matter on a review of the record, including the transcript, under the provisions of Government Code section 11517, subdivision (c)(2)(E). The Licensee Olivas was notified of the Decision to Non-adopt the Proposed Decision, via registered mail, on March 25, 2014. On May 22, 2014, Licensee Olivas was provided, at no cost, via registered mail, the administrative record, including the transcript.

Licensee Olivas declined to submit any additional materials for the California Horse Racing Board to consider prior to rendering the Decision and Order After Non-Adoption of Proposed Decision.

The California Horse Racing Board has reviewed the Matter on the record and issues its Decision in the Matter as follows:

The Proposed Decision is hereby adopted as to all findings of fact to reflect Licensee Olivas violated CHRB Rule No. 1843.2 (a), (b) and (d) due to the presence of Class IV Prohibited Drug Substance Cetirizine, and the presence of Class II Prohibited Drug Substance Hydroxyzine in his horse "TR Specialty," and CHRB Rule No. 1902 Conduct Detrimental to Horse Racing. Further, "TR Specialty" is disqualified from the second race at the Los Alamitos Race Course on December 1, 2013, and must pass a CHRB approved examination pursuant to CHRB Rule No. 1846 before becoming eligible to be entered and be subject to drug testing at Licensee's expense and be negative for prohibited drug substances as defined in CHRB Rule No. 1843.1.

The attached Proposed Decision of the Board of Stewards is hereby modified to reflect that the Licensee Jose Olivas is suspended for thirty (30) days and fined the sum of one thousand (\$1,000.00) dollars. The actual days of suspension and payment of the fine are to be set by the Board of Stewards.

IT IS SO ORDERED ON July 18, 2014.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman


By: Rick Baedeker
Executive Director

State of California

CALIFORNIA HORSE RACING BOARD

**PROPOSED DECISION
of the
BOARD OF STEWARDS**

Los Alamitos Race Course

March 8, 2014

In the Matter of the Complaint Against:

**Jose Olivas
Respondent
Case #14LA0026**

INTRODUCTION

This matter has been heard before the Board of Stewards, George Slender, Ruben Moreno, and James Dreyer, in the Los Alamitos Stewards' Office on February 14, 2014.

Present at the hearing was the respondent, Owner Jose Olivas, Trainer Guillermo Morales, Senior Investigator Tom Blake, Investigator Kevin Kitashima, Safety Steward Randy Winick, and this Board of Stewards. Transcribing the proceedings is Court Reporter Michelle Derieg.

PROCEDURAL BACKGROUND

Owner Jose Olivas was the owner of record for the horse "TR Specialty," who started in the second race at Los Alamitos Race Course on December 1, 2013. On December 19, 2013, Sacramento Headquarters faxed information to Supervising Investigator Tom Blake at Los Alamitos Race Course that "TR Specialty" (Urine Sample #LA24820) tested positive for the class IV prohibited drug Cetrzine and the class II prohibited drug Hyrdoxyzine after finishing first in the second race on December 1, 2013. Owner Olivas was notified of the positive on December 19, 2013. On December 19, 2013, Trainer Guillermo Morales completed the forms for the split sample testing. PhAst Laboratory - ISU was selected as the lab to conduct the testing of the split sample. On January 31, 2014, investigators received a Final Report from PhAst Laboratory – ISU, confirming that the split sample #LA24820 contained the presence of Hydroxyzine (42 ng/ml) and Cetirizine (7500 ng/ml).

LIST OF EXHIBITS

Complainant / State

California Horse Racing Board Complaint
#14LA0026

Respondent / Defendant

No documents submitted

FINDINGS OF FACT

I.

At all times 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 "TR Specialty" when it raced in the second race on December 1, 2013 at Los Alamitos Race Course. "TR Specialty" finished first in the aforementioned race.

III.

A post-race urine sample (labeled sample #LA24820) was taken from "TR Specialty" 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 #LA24820 from "TR Specialty" was uninterrupted.

V.

After analyzing the sample, Maddy Laboratory reported a finding of the prohibited drugs, Cetirizine, a class IV substance, and Hydroxyzine, a class II substance, in the sample.

VI.

On December 19, 2013, Trainer Morales informed the investigators telephonically that he had spoken to Owner Jose Olivas and notified him of the positive tests.

VII.

The Respondent elected to have a split sample sent to PhAst Laboratory – ISU.

VIII.

On January 31, 2014, investigators received confirmation from PhAst Laboratory – ISU that urine sample #LA24820 contained Cetirizine and Hydroxyzine.

APPLICABLE RULES

California Horse Racing Board Rule 1843 (a,b,&d) (Medication, Drugs and Other Substances) states:

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 to the horse.

California Horse Racing Board Rule 1902 (Conduct Detrimental to Horse Racing) states:

No licensee shall engage in any conduct prohibited by this Division nor shall any licensee engage in any conduct which by its nature is detrimental to the best interests of horse racing including, but not limited to:

(a) knowing association with any known bookmaker, known tout or known felon,

(b) indictment or arrest for a crime involving moral turpitude or which is punishable by imprisonment in the state or federal prison, when such indictment or arrest is the subject of notorious or widespread publicity in the news media, and when there is probable cause to believe the licensee committed the offenses charged,

(c) solicitation of or aiding and abetting any other person to participate in any act or conduct prohibited by this Division.

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

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.

DISCUSSION

The first action required by California Horse Racing Board Rule #1859.5 (Disqualification Upon Positive Test Finding) was applied to this case on February 8, 2014, by the Los Alamitos Stewards, which was the issuing of Ruling #22, for the disqualification and purse redistribution of "TR Specialty" for the detection of Hydroxyzine (Class II) and Cetirizine (Class IV) in the post-race sample. The trainer of record, Guillermo Morales, did request a split sample, which was confirmed by Iowa State University Veterinary Diagnostic Laboratory as positive for the above named drugs.

As the factual findings indicate, the Respondent owned a horse, "TR Specialty," that tested positive for the drugs Hydroxyzine (Class II) and Cetirizine (Class IV), the presence of which is prohibited by California Horse Racing Board Rules and Regulations.

There is no dispute about the positive test finding by either the trainer of record, Guillermo Morales, or the owner, Jose Olivas, however Mr. Olivas does give his statement about how this may have happened. Mr. Olivas stated that he keeps his horses at a ranch he leases stall space at to save on training costs and so he can also go out and take care of his horses himself. He has four horses out there. He won three races doing this method. Mr. Olivas stated that he has serious sinus and allergies, which require him to take medication that contains the two drugs involved, Hydroxyzine and Cetirizine. Mr. Olivas stated that he does not treat these horses with any medication. He takes instructions from his trainer, Guillermo Morales. Dr. Overly treated this horse with bute the night before the race, and Dr. Lorbiecki treated him with lasix on race day. He also informed the Stewards that Dr. Overly told him that he has never treated his horses with these drugs and that it must be contamination. The Stewards were told by Dr. Rick Arthur and Dr. Scott Stanley that the level at which the horse tested was way too high for it to be simple contamination. It appears that the horse was treated directly with this medication. Mr. Olivas says that he did not knowingly give his personal medication to "TR Specialty." It must have been an accident that it got into his system. He said he brushes, bathes, and grooms this horse and also occasionally urinates in his stall, which may be how he got it in his system. Mr. Olivas really does not know how this happened.

Mr. Olivas has been licensed since 2007 and has never been in trouble. Throughout this investigation, Mr. Olivas has cooperated fully.

The inquiry now goes to the penalty phase as outlined in California Horse Racing Board Rule #1843.3 (Penalties for Medication Violations), which differentiates specific penalties for medication positives as well as mitigating factors that would allow for deviation from the penalties. These are class II and class IV violations that are both class "B" penalties, which calls for the disqualification and loss of purse for an owner in the first two offenses while also subjecting him to an examination

and drug testing of the offending horse. It must also be noted that under California Horse Racing Board Rule #1843.3 (h), any licensee found to be responsible for the administration of any drug substance resulting in a positive test may be subject to the same penalties set forth for the "Licensed Trainer" and his or her presence may be required at any and all hearings relative to the case. This portion of the rule would apply to Mr. Olivas in this case, since he is an owner and not a trainer.

A review Mr. Olivas' medication violation history shows no violations since he was first licensed in 2007.

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

- (1) *Past Medication Record of the Licensee:* Mr. Olivas has no previous medication violations. **Mitigating.**
- (2) *The Potential of the Drug to Influence a Horse's Performance:* These two drugs can influence performance because of such side effects of sleepiness, drowsiness, difficulty breathing, and sedation. **Aggravating.**
- (3) *The Legal Availability of the Drug:* These are relatively easy to acquire through prescription or over the counter. They are primarily for human use. **Neutral.**
- (4) *Whether There is Reason to Believe the Responsible Party Knew of the Administration of the Drug or Intentionally Administered the Drug:* Mr. Olivas said he used but did not give these drugs intentionally. He said he may have contaminated the horse from sweat, grooming the horse, or urinating in the stall. **Aggravating.**
- (5) *Steps Taken by the Trainer to Safeguard the Horse:* Does not apply. **Neutral.**
- (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:* Mr. Olivas said now that he is aware of this problem, he will do everything in his power to not contaminate any horse he has running. **Mitigating.**
- (7) *Probability of Environmental Contamination or Inadvertent Exposure Due to Human Drug Use or Other Factors:* There is a strong possibility of contamination by accident or possible treatment by the owner, although he said he did not give the drugs. **Aggravating.**
- (8) *Purse of the Race:* There was no incentive due to the low purse value. **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):* There is no reason this horse needed to be treated with these drugs. **Aggravating.**
- (10) *Whether there was any Suspicious Wagering Pattern on the Race:* There was no evidence of irregular or suspicious betting. **Mitigating.**

(11) *Whether the Licensed Trainer was Acting under the Advice of a Licensed Veterinarian:* There is no evidence of this. **Mitigating.**

A review of the factors reveals that there are more mitigating (5) factors than aggravating (4) ones. There are also two neutral factors.

It is the opinion of this Board of Stewards that Owner Jose Olivas was negligent in working with his horse at the ranch prior to his race and allowing an environment to exist that has proved to be dangerous and neglectful in his actions.

CONCLUSION

Following a formal hearing, this Board of Stewards concludes the class IV prohibited drug substance, Cetirizine, and the class II prohibited drug substance, Hydroxyzine, were both found in urine sample #LA24820 taken from the horse "TR Specialty," the first place finisher in the second race at Los Alamitos Race Course on December 1, 2013. This finding requires the disqualification of "TR Specialty" 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). Cetirizine is a class IV drug that falls in the class "B" penalty, and Hydroxyzine is a class II drug that also falls in the "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

* * *

Owner Jose Olivas is suspended for forty-five (45) days for violation of California Horse Racing Board Rule #1843.3 (a,b&d) (Medication, Drugs and Other Substances) and California Horse Racing Board Rule #1902 (Conduct Detrimental to Horse Racing).

In addition, Owner Olivas' horse, "TR Specialty," must pass a Board approved examination pursuant to California Horse Racing Board Rule #1846 before becoming eligible to be entered and be subject to drug testing at the owner's expense and be negative for prohibited drug substances as defined in California Horse Racing Board Rule #1843.1.

During the term of suspension, all licenses and license privileges of Jose Olivas are suspended and pursuant to California Horse Racing Board Rule #1528 (Jurisdiction of Stewards), subject is denied access to 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# 292727-04/2016

Case# 14LA0026

Dated March 8, 2014 by this Board of Stewards:

James Dreyer
Steward James Dreyer

Ruben Moreno
Steward Ruben Moreno

George Slender
Steward George Slender

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