BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint Against: **ANTONIO SOTO** **CHRB License #251517** Respondent	CHRB Case #14LA0084

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 the payment of fine.

IT IS SO ORDERED ON June 19, 2014.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman

Rick Baedeker
Executive Director

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Complaint/Accusation against: ANTONIO SOTO, Respondent License Type: Trainer License No. 251517-05/2015	Case No. 14LA0084 **PROPOSED DECISION**

INTRODUCTION

This matter was heard on May 9, 2014 by the Board of Stewards, George Slender, Ruben Moreno, and James Dreyer, in the Los Alamitos Stewards' Office.

Present at the hearing was the Respondent, Trainer Antonio Soto, Senior Investigator Tom Blake, Investigator Kevin Kitashima, Safety Steward Randy Winick, and Stewards George Slender, Ruben Moreno, and James Dreyer. Court Reporter Dawn Young transcribed the proceedings.

PROCEDURAL BACKGROUND

Trainer Antonio Soto was the trainer of record for the horse "Signature Rocket," who started in the third race at Los Alamitos Race Course on March 21, 2014. On April 3, 2014, Sacramento Headquarters faxed information to Supervising Investigator Tom Blake that "Signature Rocket" (Urine Sample #LA25481) tested positive for the class III prohibited drug Clenbuterol after finishing first in the third race on March 21, 2014. Trainer Soto was notified of the positive on April 4, 2014, and a barn inspection found no further violations. On April 17, 2014, Investigator Kitashima received notification that Trainer Soto and Owner Ernesto Dukes had both declined to submit the split sample to be tested.

LIST OF EXHIBITS

Complainant / State	California Horse Racing Board Complaint #14LA0084
Respondent / Defendant	No exhibits submitted.

FINDINGS OF FACT

I.

At all times herein mentioned, Respondent was licensed by the California Horse Racing Board in the license category of "trainer."

II.

Respondent was the trainer of record for the horse "Signature Rocket" when it raced in the third race on March 21, 2014 at Los Alamitos Race Course. "Signature Rocket" finished first in the aforementioned race.

III.

A post-race urine sample (labeled sample #LA25481) was taken from "Signature Rocket" 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 #LA25481 from "Signature Rocket" was uninterrupted.

V.

After analyzing the sample, Maddy Laboratory reported a finding of the prohibited drug, Clenbuterol, a class III substance.

VI.

On April 4, 2014, Trainer Antonio Soto was notified that "Signature Rocket" had tested positive for Clenbuterol.

APPLICABLE RULES

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

(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.

(b) Notwithstanding the above, if the Board or its agents fail to notify a trainer of a potential positive test within 21 calendar days from the date the sample was taken, the trainer shall not be deemed responsible under this rule unless it is shown by the preponderance of the evidence that the trainer administered the drug or other prohibited substance defined in Rule 1843.1 of this division, caused the administration or had knowledge of the administration.

California Horse Racing Board Rule 1843 (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 1859.5 (Disqualification Upon Positive Test) 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

As the factual findings indicate, the Respondent trained a horse that tested positive for a drug substance, Clenbuterol, the presence of which is prohibited by California Horse Racing Board Rules and Regulations.

There is no dispute about the positive test findings by either the trainer of record or the owner. With the first issue in this case not disputed of the actual drug positive by Trainer Soto, the second portion of the equation, that of trainer responsibility (California Horse Racing Board Rule #1887 – Trainer to Insure Condition of Horse), needs to be addressed along with if there is any penalty that needs to be applied and to what extent by determining if there are mitigating and/or aggravating circumstances in Mr. Soto's culpability. Trainer Soto is entitled to a defense of his responsibility by California Horse Racing Board Rule #1888 (Defense to Trainer Insurer Rule), which has four defenses. Sections (a), (b) and (d) (Procedural Defenses) do not apply in this case, and Section (c), which asks the trainer to show by a preponderance of evidence that he made every reasonable effort to protect the horses in his care from tampering by unauthorized persons, does not apply.

Throughout the investigation and hearing, Mr. Soto cooperated completely.

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. This is a class III violation that is a class "B" penalty, which calls for a minimum thirty day suspension absent mitigating circumstances.

A review of Trainer Soto's medication violation history reveals that he has had prior class III violations for Albuterol on May 26, 2007 and TCO^2 on August 6, 2006 and class IV violations for Guaifenesin/Dextrorphan in 2013 as well as two Phenylbutazone positives in 2010.

A review of the aggravating and mitigating factors is now required to determine if some deviation from the minimum penalty is appropriate:

(1) *Past Medication Record of the Licensee*: As stated above, he has had multiple violations on his past history. We consider this **aggravating**.

(2) *The Potential of the Drug to Influence a Horse's Performance*: Clenbuterol can enhance a horse's performance, however, at the minute level of 200 picograms/ml it is highly unlikely. **Mitigating**.

(3) *The Legal Availability of the Drug*: Clenbuterol is easily available from any veterinarian as this is not an illegal drug to use, just to race on. This is a **neutral** factor.

(4) *Whether There is Reason to Believe the Responsible Party Knew of the Administration of the Drug or Intentionally Administered the Drug*: Upon reviewing the testimony by Trainer Soto, it is our opinion that he did not intentionally administer Clenbuterol to "Signature Rocket." The horse was shipped in to Trainer Soto the day before the race. Trainer Soto testified that he strongly suspects the owner was matching the horse. In our opinion, this is a **mitigating** factor.

(5) *Steps Taken by the Trainer to Safeguard the Horse*: This is a **neutral** factor as the horse was shipped to Soto the day before the race.

(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 evidence on this factor and is therefore **neutral.**

(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*: This is **mitigating** because the purse of the race was rather small: $6,360.

(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)*: The horse was not prescribed Clenbuterol. **Aggravating.**

(10) *Whether there was any Suspicious Wagering Pattern on the Race*: This is a **mitigating** factor because of no known evidence that wagering on this race was out of the ordinary.

(11) *Whether the Licensed Trainer was Acting under the Advice of a Licensed Veterinarian*: **Aggravating** as there is no evidence of his or any veterinarian's advice for approval of this drug to be used on his horses.

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

It should also be noted that this is the second horse in less than three months with a positive class III owned by Ernesto Dukes, which has affected two trainers.

CONCLUSION

Following a formal hearing, this Board of Stewards concludes the class III prohibited drug substance, Clenbuterol, was found in urine sample #LA25481 taken from the horse "Signature Rocket," the first place finisher in the third race at Los Alamitos Race Course on March 21, 2014. This finding requires the disqualification of "Signature Rocket" 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). Clenbuterol is a class III drug that falls in the class "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

* * *

Trainer Antonio Soto, who started the horse "Signature Rocket" in the third race on March 21, 2014 at Los Alamitos Race Course, is fined three thousand dollars ($3,000.00)* and suspended sixty (60) days pursuant to California Horse Racing Board Rule #1887 (Trainer 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 – Clenbuterol – Class III).

Fifteen (15) of the days of suspension are stayed. Antonio Soto is placed on probation and shall not have any violations for Class I, II, or III substances. If probation is violated subject shall serve the fifteen (15) stayed days.

During the term of suspension, all licenses and license privileges of Antonio Soto are suspended and pursuant to California Horse Racing Board Rule #1528 (Jurisdiction of Stewards to Suspend or Fine), Antonio Soto 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# 251517-05/2015

Case# 14LA0084

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Dated June 6, 2014 by this Board of Stewards:

Steward James Dreyer

Steward Ruben Moreno

Steward George Slender