

BEFORE THE
CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

In the Matter of:)

California Horse Racing Board)

v.)

DEAN PEDERSON,)

Trainer)

Case No. 15SA168

STATEMENT OF DECISION

PROCEDURAL BACKGROUND

The California Horse Racing Board (hereinafter “CHRB” or “Complainant”) filed a complaint against trainer Dean Pederson (hereinafter “Mr. Pederson” or “Respondent”) alleging violation of CHRB rules 1629 (Penalty for Late Declaration) and 1887 (Trainer or Owner to Insure Condition of Horse). The complaint alleged that Respondent was responsible when a horse in his care was scratched and therefore failed to start when it was erroneously given a prohibited medication on race day by a third party. The alleged incident occurred in April of 2015. A Steward’s ruling resulted from the subsequent hearing. That ruling was appealed to the Office of Administrative Hearings (hereinafter “OAH”) by Respondent. While that appeal was pending, the two parties entered into a stipulated agreement which, among other things, included a provision for a *de novo* hearing in front of a Board of Stewards. This Board of Stewards held that formal hearing into the matter on two days: April 6, 2017, continued to and concluded on May 23, 2017. Present at the hearing were this Board (Grant Baker, Scott Chaney, and Kim Sawyer), the Respondent Dean Pederson with his attorney Steve Schwartz, CHRB Investigator Jim Hamilton and the CHRB’s counsel Deputy Attorney General Venessa Martinez. Michelle Derieg recorded the proceedings. On both days, we opened the hearing at approximately 10:00 a.m., took oral testimony from witnesses Dr. William Bell (telephonically), assistant trainer Joshua Litt, Respondent Pederson, and CHRB Investigator James Hamilton. We also labeled documentary evidence and entered it into the record. The record was left open for written closing briefs which were submitted after both parties were afforded a transcript and reasonable time. The record was then closed on October 31, 2017.

LIST OF EXHIBITS

CHRB Exhibit 1 Complaint Packet including: Cover page, Governing Procedures for Disciplinary Hearing Before Board of Stewards, CHRB Report of Investigation, Horse Arrival Records 4/24/15 – “Papa’s Lass” and “Go First”, Official Program page Fourth Race 4/25/15, CHRB regulations, Certification of Administrative Record, Horse Medication Inquiry – Go First, and License Information and History for Alexander Freeman, Joshua Litt, Martin Jones, and Respondent.

CHRB Exhibit 2 Hearing Brief dated April 6, 2017 submitted by DAG Martinez.

CHRB Exhibit 3 Stipulated Settlement dated September 1, 2016.

CHRB Exhibit 4 Joint Statement of 1. Stipulated Facts; 2. Controverted Issues; and 3. Contentions dated September 1, 2016.

CHRB Exhibit 5 Memorandum of Legislative History regarding SB 31 (Chapter 401, Statutes of 1991) from Senator Ken Maddy to Henry Chavez, Chairman, CHRB dated January 2, 1992.

CHRB Exhibit 6 Complainant’s Closing Brief.

Respondent Exhibit A Respondent’s Hearing Brief dated April 6, 2017.

Respondent Exhibit B Respondent’s Hearing Brief dated April 6, 2017.

Respondent Exhibit C Stokes v. Cal. Horse Racing Board (Court of Appeal of California, Second Appellate District, Division Seven, May 15, 2002, Decided, No. B147589) .

Respondent Exhibit D Respondent’s Hearing Brief on the Law of Statutory Interpretation dated May 23, 2017.

Respondent Exhibit E Respondent’s Closing Argument Brief dated October 31, 2017.

FACTUAL FINDINGS

I

At all times herein mentioned, Dean Pederson was licensed by the CHRB in the license category of trainer.

II

On April 24, 2015, a horse named “Go First” (hereinafter “the horse”) trained by Respondent, was transported by KC Horse Transport from Los Alamitos Race Course to

Santa Anita Park. "Go First" was scheduled to run in the fourth race at Santa Anita on April 25, 2015.

III

The horse was deposited in the stall of trainer Martin Jones by the van driver rather than the intended stall of substitute trainer Julio Canani.

IV

Respondent did not send a groom or any other employee with the horse but relied on the van driver and Mr. Canani's employees to care for his horse.

V

On the morning of the intended race, Mr. Jones' employees treated the horse with acepromazine, believing it to be their horse that had shipped from Los Alamitos as well. The Jones horse was placed in Mr. Canani's barn.

VI

When the switch was discovered, Respondent contacted the Stewards and explained that his horse had received medication that would result in a positive test if the horse ran in the race and was drug tested.

VII

This Board of Stewards therefore scratched the horse, and referred the matter to the CHRB investigative staff which resulted in the filing of this complaint.

APPLICABLE RULES AND REGULATIONS

California Horse Racing Board rule 1629. Penalty for Late Declaration.

No person other than the stewards may declare a horse out of any overnight race after the "scratch time" designated for such race by the stewards, and the starting of such horse is obligatory. Any person responsible for the failure of any horse to start in a race when the starting of such horse is obligatory may be disciplined by the stewards.

California Horse Racing Board rule 1887. 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.

- (b) A ship-in horse is defined as any horse entered to race that has not been in the care of a Board-licensed trainer for seven consecutive calendar days prior to the day of the race for which it is entered.
- (c) Notwithstanding the above, if the Board or its agent fail to notify a trainer or the owner of a ship-in horse of a potential positive test within 21 calendar days from the date the sample was taken, the trainer or the owner of a ship-in horse shall not be deemed responsible under the rules unless it is shown by the preponderance of the evidence that the trainer or the owner of a ship-in horse administered the drug or other prohibited substance defined in ship-in horse administered the drug or other prohibited substance defined in Rule 1843.1 of this division, caused the administration or had knowledge of the administration.

NOTE: Authority cited: Sections 19440, 19580 and 19581, Business and Professions Code. Reference: Sections 19440, 19577, 19580 and 19581 Business and Professions Code.

HISTORY:

1. Amendment filed 7-9-92; effective 8-8-92.
2. Amendment filed 10-25-94; effective 11-24-94.
3. Amendment filed 12-6-99; effective 12-6-99.
4. Amendment filed 8-8-05; effective 9-7-05.
5. Amendment filed 12-29-15; effective 4-1-16.

DISCUSSION OF ISSUES

The facts in this case are not in dispute. In fact, both parties stipulated to the basic facts in matter. The real issue in this case is whether the rules hold Mr. Pederson responsible for the declaration of his horse. That is, did he violate CHRB Rules 1629 and/or 1887? Respondent entered a horse in his care in a race at Santa Anita. The day before the race was scheduled to be run, he shipped the horse from his barn at Los Alamitos to Santa Anita via a third party vanning company. The horse was not accompanied by any of Respondent's employees and the horse was scheduled to be stabled in another trainer's (Mike Puype) barn through the completion of the race. That substitute trainer had no unoccupied stalls and therefore Respondent arranged for his horse to be stabled in a third trainer's (Julio Canani) barn. The third party vanning company personnel mistakenly switched the two horses on the van that day and deposited Respondent's horse in a fourth trainer's (Martin Jones) barn. On the morning of the race, the personnel of that fourth trainer, believing the horse to be theirs, medicated Respondent's horse with acepromazine (a tranquilizer), which would have resulted in a positive drug test had the horse competed (and been subsequently tested). Respondent reported the medication misadministration to the Board of Stewards who scratched the horse in order to protect the wagering public and shield Respondent from the inevitable positive drug test. (Note: Acepromazine is a Class 3 medication, Penalty Category B, with a minimum suspension of 30 days (absent mitigating circumstances) and/or a minimum fine of \$500.00 (absent mitigating circumstances), up to a maximum 60 day suspension and/or \$10,000 fine for a first offense). The CHRB alleged two rule

violations: (1) 1629 which reads in pertinent part that “[a]ny person responsible for the failure of any horse to start in a race when the starting of such horse is obligatory may be disciplined by the stewards” and (2) 1887, which states that “[t]he 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.” Respondent argues that 1887 does not apply because the horse in question never started in race, and Respondent further argues that even if 1887 does apply, one of the defenses to an 1887 violation exonerates him. That is CHRB Rule 1888 (Defense to Trainer Insurer Rule), which states in pertinent part that “[a] trainer may defend, mitigate or appeal the charge if... (c) [h]e shows, by the preponderance of evidence that he made every reasonable effort to protect the horses in his care from tampering by unauthorized persons...” Respondent also argues that CHRB rule 1629 does not apply to this situation because a third party or third parties were responsible for the horse not starting in the intended race. We reject these arguments. While Respondent correctly avers that rule 1887 has typically (and possibly only) been applied to actual positive post race drug tests, it is not limited to those applications both on its face and from a policy standpoint. Rule 1887 specifically applies to “horses entered in a race,” and Respondent’s horse was entered in a race. It also holds trainers responsible “regardless of the acts of third parties.” If the rule only applies to horses who run in races and test positive, there would be no need for the language regarding entered horses. Clearly, the rule views the time between entry and post race testing as significant; so significant that it holds trainers responsible even for acts of third parties (as can be argued in the instant matter). Further, to this Board it seems almost hypocritical to argue that the rule only applies to drug positives, when one considers if the horse had raced after the acepromazine administration and tested positive, Respondent would have been facing a minimum suspension of 30 days and minimum fine of \$500.00. Since the mistake was discovered and the horse was scratched, Respondent instead was fined \$400.00 for the late declaration. We further find the defense that Respondent made “every reasonable effort to protect the horses in his care from tampering by unauthorized persons,” unconvincing. Given the special status that rule 1887 affords horses that are entered to race, it seems unreasonable to this Board, to relinquish care and control of one’s horse for the 24 hours leading up to the race (both to a van company and another trainer). Simply because Respondent engaged in this practice in the past or other trainers engage in the practice is not persuasive.

Respondent also argues that he did not violate CHRB 1629 because he was not “responsible” for his horse not starting. While there were undoubtedly several errors which contributed to the scratch being necessary, we do find that Respondent is responsible and given the language of 1887, is not absolved of his obligation to start the horse simply because the proximate cause were acts of third parties. The error was preventable had Respondent sent an attendant with the horse and not relinquished care and control of his horse in the final hours leading up to the race. While rule 1887 can no longer be said to apply strict liability to these types of situation (mitigating/aggravating circumstances, and defenses now apply), it nevertheless correctly recognizes that trainers are in the best position to prevent both post race drug positives as well as unintended drug administrations similar to the one that occurred here. Therefore, we find that Respondent violated CHRB rules 1887 and 1629, and should be penalized in the same manner as the original ruling issued three years ago.

CONCLUSION

Given all of the foregoing, we issue the following ruling/decision:

State of California
CALIFORNIA HORSE RACING BOARD

Official Ruling
of the
Board of Stewards

Santa Anita Park
(Association)

March 25, 2018
(Date)

LATS #122

Trainer DEAN PEDERSON is fined FOUR HUNDRED DOLLARS (\$400.00)* for violation of California Horse Racing Board rules #1887 (Trainer or Owner to Insure Condition of Horse) and #1629 (Penalty for Late Declaration) which caused his horse to be scratched from the fourth race on April 25, 2015 at Santa Anita Park.

LIC #: 058838 exp. 3/2020
CASE #: 15SA168

*Rule #1532. Fine shall be paid to the Paymaster within seven calendar days from the date of this ruling, or the license of the person upon whom the fine has been imposed shall be suspended.

BOARD OF STEWARDS

Grant Baker

C. Scott Chaney

Kim Sawyer