

STATE OF CALIFORNIA  
CALIFORNIA HORSE RACING BOARD  
1010 HURLEY WAY, SUITE 300  
SACRAMENTO, CA 95825

EDMUND G. BROWN JR. GOVERNOR



**STATEMENT OF DECISION**

Of the

**BOARD OF STEWARDS**

**SANTA ANITA PARK**

**November 25, 2017**

In the Matter of:	)	
Disqualification of	)	
Skye Diamonds	)	Case No. 17SA197
	)	
William Spawr, Trainer	)	
CHRB License #066860 exp. 12/2017	)	
Tiago Pereira, Jockey	)	
CHRB License #315311 exp. 11/2019	)	
Thomas Acker, Owner	)	
CHRB License #254754 exp. 11/2018	)	
Lori Allen, Owner	)	
CHRB License #284307 exp. 01/2020	)	
Jeffery Bloom, Owner	)	
CHRB License #285740 exp. 01/2020	)	
Allen Racing LLC, Stable Name	)	
CHRB License #307333 exp. 12/2019	)	

This matter was heard on August 24, 2017 at Del Mar Race Track and was continued on September 30, 2017, at Santa Anita Park in Arcadia, CA before Stewards Grant Baker, C. Scott Chaney and Kim Sawyer.

Tom Acker, Allen Racing LLC and Bloom Racing Stables LLC is the ownership group for the horse Skye Diamonds. They are charged in complaint 17SA197 with violation of California Horse Racing Board rule #1859.5 (Disqualification upon Positive Test Finding).

The California Horse Racing Board (CHRB) was represented by Senior Investigator James Hamilton.

Owner Jeffery Bloom (Respondent) was present for the hearing on September 30, 2017.

Michelle Derieg (Weinstein Court Reporters LLC) transcribed the proceedings.

Oral and documentary evidence was admitted.

### APPLICABLE REGULATION

California Horse Racing Board Rule # 1859.5  
Disqualification Upon Positive Test

*1859.5 Disqualification Upon Positive Test Finding. Rule Text 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. NOTE: Authority cited: Sections 19440 and 19562, Business and Professions Code. Reference: Sections 19401, 19440, 19577 and 19582.5, Business and Professions Code; Sections 337f, 337g and 337 h, Penal Code. HISTORY: 1. New rule filed 4-21-83; effective 5-21-83. 2. Amendment filed 8-10-95; effective 9-9-95. 3. Amendment filed 12-6-99; effective 12-6-99.*

### LIST OF EXHIBITS

**CHRB EXHIBIT #1** CHRB Non - Represented Hearing Questionnaire  
For Respondents: Jeffery Bloom, Thomas Acker and Lori Allen.

**CHRB EXHIBIT #2** CHRB Complaint for Respondent: Jeffrey Bloom, Thomas Acker, Lori Allen which included, complaint cover page, Governing Procedures for Disciplinary Hearing before Board of Stewards. Equibase Chart – Race 5 – May 7, 2017, CHRB Licensee Rulings Inquiry, Owner Jeffrey Bloom, Owner Thomas Acker, Owner Lori Allen, Jockey Tiago Periera and Trainer William Spawr.

**RESPONDENT EXHIBIT A** – Letter (Dated September 20, 2017) sent from Law Firm Wyatt, Tarrant & Combs, LLP., Attorney W. Craig Robertson III, Lexington KY sent to California Horse Racing Board, 1010 Hurley Way, Suite 300 Sacramento, CA 95825

### FINDINGS OF FACT

#### I

On May 7, 2017 the horse Skye Diamonds finished 2<sup>nd</sup> in the 5<sup>th</sup> Race at Santa Anita Race Park. This was the Grade 3 Adoration Stakes. Skye Diamonds earned \$20,000.00 for this effort.

#### II

Post race sample #SA25655 was analyzed by U.C. Davis Laboratory and was found to contain the Class 3 Drug Clenbuterol. The reported level was 196 pg/ml. For a thoroughbred horse in California the allowable level is 140 picograms per milliliter.

### III

A Split sample was sent to Texas Veterinary Medical Diagnostic Laboratory. Texas Veterinary, an approved split sample laboratory, confirmed the presence of Clenbuterol in excess of the authorized level.

### IV

On August 4, 2017 Owners Jeffery Bloom, Thomas Acker and Lori Allen were issued a 'Notice to Appear' to answer to alleged violation of CHRB Rule #1859.5 (Disqualification Upon Positive Test Findings). This was a notice to appear for hearing at Del Mar on August 24, 2017.

### V

On August 24, 2017 the following licensees appeared in our office at Del Mar Race Track to hear this matter. They were Trainer Bill Spawr, Owner Lori Allen, Owner Chuck Allen, Owner Jeffery Bloom and Owner John Lindo.

### VI

Trainer Bill Spawr (Case #17SA128) reached a 'Settlement Agreement and Mutual Release' that was agreed upon between Trainer Spawr and the California Horse Racing Board. That agreement was finalized on August 2, 2017. On August 25, 2017 Del Mar Thoroughbred Stewards issued DMTD Ruling #31 suspending Bill Spawr 60 days (30 days stayed) and also fining him \$3,000.00.

### VII

The Owners involved in the Formal Hearing on this day (August 24, 2017) requested a continuance in this matter (Case #17SA197). This case was continued to September 30, 2017, 11:00 a. m. at Santa Anita Park. The request for a continuance was to better understand the procedure and process of a positive test. There was no mention of obtaining legal counsel at that time.

### VIII

At the continued hearing, 36 days later, another continuance (90 Days) was requested. Attorney W. Craig Robertson III contacted the Stewards via telephone on the afternoon of September 29, 2017, less than 24 hours before the continuance hearing. Owner Jeffery Bloom brought a letter from Mr. Robertson to the hearing. That request, in letter form was marked as a Respondent exhibit at hearing. The request for a second continuance was unanimously denied by the Stewards.

### IX

The letter sent by Attorney W. Craig Robertson was sent to the California Horse Racing Board in Sacramento, CA. The letter states that Mr. Robertson's clients request that this matter be referred to an Administrative Hearing Officer. It also asks for a 90 day continuance.

### X

Lexington Kentucky based lawyer W. Craig Robertson III contacted the CHRB in Sacramento CA, representing Owner Bloom, Acker and Allen. He appealed the Stewards decision in a timely matter pursuant to California Horse Racing Board Rule #1761 (Appeal From Decision of Stewards).

### DISCUSSION

CHRB Rule #1859.5 (Disqualification Upon Positive Test Finding) is a fairly straight forward rule. The Rule is two (2) sentences in length and uses the word shall three (3) times. The word 'May' does not appear in the Rule. Portions of the rule reads as follows.

1. The presence of the prohibited drug substance determined to be in class levels 1, 3 shall require disqualification of the horse.
2. The horse shall be deemed unplaced in that Race.
3. Disqualification shall occur regardless of capability for the condition of the horse.

The Court of Appeal of California, Second Appellate District, Division addressed the application of CHRB Rule #1859.5 (Disqualification Upon Positive Test Finding) on August 22, 1997 in a five (5) page decision (see Lavin V. California Horse Racing Board, 66 Cal. Rptr 2d 843 (1997) (Opinion by Judge J. Dunn; Judge P.J. Spencer and J. Ortega, concur). In this appeal decision (No. B108188) on page 5... *A Rule which pronounces unequivocally that any contaminated horse will not be permitted to win a Race is consistent with the CHRB's responsibility to protect the integrity of the sport of horse racing as is, therefore, not unreasonable. This decision goes on to state in part...that a general rule of blanket disqualification is the most effective statutory implement to accomplish it's objective allowing only drug free horses to race.*

The California Horse Racing Board enacted Rule 1859.5 in 1983. A violation of a Class 1, 2 or 3 drug necessitates a disqualification and a purse redistribution and this is the case in this matter. Trainer Bill Spawr was suspended and fined on August 25, 2017 (Del Mar Ruling #61). Owners Bloom, Acker and Allen requested more time and were granted a thirty six (36) day continuance. The owners' made no mention of wanting time to obtain legal counsel at the time of the original hearing (August 24, 2017). The Stewards' denied the second request for a continuance as other parties were waiting for the irreversible redistribution of the purse in this case. The notice of hearing for this case was dated August 4, 2017. A letter dated September 20, 2017 was sent to the California Horse Racing Board stating that Attorney W. Craig Robertson III had been retained by Jeffery Bloom, Thomas Acker and Lori Allen. It was presented to the Stewards' for the first time at the September 30, 2017 continued hearing. Attorney Robertson requested that his clients receive a 90 day continuance and this matter be referred to a hearing officer. That request was denied.

### CONCLUSION

The Stewards, in a unanimous decision, order that Skye Diamonds be disqualified from all purse monies earned in the Fifth Race at Santa Anita Park on May 7, 2017 and be deemed unplaced in accordance with California Horse Racing Board Rule #1859.5 (Disqualification Upon Positive Test Finding). The Santa Anita Park Stewards' issued the following Ruling on October 1, 2017.

State of California  
CALIFORNIA HORSE RACING BOARD

**Official Ruling**  
of the  
**Board of Stewards**

**SANTA ANITA AUTUMN MEET**  
(Association)

**October 1, 2017**  
(Date)

**LATC #002**

Acting on a report from the University of California, Davis, Maddy Analytical Laboratory, the official laboratory for the California Horse Racing Board, that the post-race urine sample #SA25655, obtained from the horse SKYE DIAMONDS, the second place finisher in the fifth race at Santa Anita Park on May 7, 2017, contained the substance Clenbuterol (Class III) in excess of the permitted level (196 pg/ml), it is hereby ordered that SKYE DIAMONDS be disqualified from all purse monies earned and deemed unplaced in accordance with California Horse Racing Board rule #1859.6 (Disqualification Upon Positive Test Finding).

It is further ordered that all purse monies (\$20,000) earned or awarded to owners TOM ACKER, ALLEN RACING LLC, BLOOM RACING STABLE LLC, Trainer BILL SPAWR (\$1840) and Jockey TIAGO PEREIRA (\$930) be returned to the Paymaster of Purses on or before November 1, 2017 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:

2 <sup>nd</sup>	SENSITIVELY
3 <sup>rd</sup>	LADY TAPIT
4 <sup>th</sup>	AUTUMN FLOWER

All records are ordered changed to reflect this ruling. In accordance with California Horse Racing Board rule #1956 (Race Declared Official) neither pari-mutuel payoffs nor the distribution of a pari-mutuel pool shall be affected.

CASE #:	17SA197
William Spawr	#066860 exp. 12/2017
Tiago Pereira	#315311 exp. 11/2019
Thomas Acker	#254754 exp. 11/2018
Lori Allen	#284307 exp. 01/2020
Jeffery Bloom	#285740 exp. 01/2020
Allen Racing LLC	#322189 exp. 12/2018
Bloom Racing Stable LLC	#307833 exp. 12/2019

DEC-4 AM 7:57

BY ORDER OF THE  
BOARD OF STEWARDS:

*Grant W. Baker*  
*C. M. M.*  
*Jim Dawson*