BEFORE THE CALIFORNIA HORSE RACING BOARD

OF THE STATE OF CALIFORNIA

In the Matter of the	)	
	)	
ACCUSATION AGAINST:	)	
	)	
	)	**CHRB Case No. 08SA069**
	)	
DOUGLAS F. O'NEILL	)	
Respondent	)	
	)	

DECISION

The attached Stipulated Settlement Agreement and Order of Probation between the California Horse Racing Board and Respondent Douglas F. O'Neill is hereby adopted by the California Horse Racing Board as its Decision in the above-entitled matter.

The Decision shall become effective on October 16, 2008.

IT IS SO ORDERED ON October 15, 2008.

CALIFORNIA HORSE RACING BOARD
Richard B. Shapiro, Chairman

Kirk E. Breed
Executive Director

EDMUND G. BROWN JR.
Attorney General of the State of California
ELIZABETH HONG
JERALD L. MOSLEY
Supervising Deputy Attorneys General
JASMINE K. BATH, State Bar No. 225040
Deputy Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
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E-mail: Jasmine.Bath@doj.ca.gov

Attorneys for California Horse Racing Board

SUPERIOR COURT OF CALIFORNIA

CALIFORNIA HORSE RACING BOARD

IN THE MATTER OF THE ACCUSATION AGAINST: **DOUGLAS F. O'NEILL,** Respondent.	CHRB Case No. 08SA069 **STIPULATED SETTLEMENT AGREEMENT AND ORDER OF PROBATION**

In the interest of a prompt and speedy resolution of these matters, consistent with the public interest and the responsibility of the California Horse Racing Board (hereinafter "CHRB"), the parties hereby agree to the following Stipulated Settlement Agreement (the "Agreement") and Order of Probation (the "Order") which will be submitted to the CHRB for consideration, approval and adoption as its Order as final disposition of the matters herein.

RECITALS

1. Complainant Kirk Breed is the Executive Director of the California Horse Racing Board. He has brought this action solely in his official capacity and is represented in this matter

by Edmund G. Brown Jr., Attorney General of the State of California, by Jerald L. Mosley, Supervising Deputy Attorney General and Jasmine K. Bath, Deputy Attorney General.

2. Respondent Douglas O'Neill is represented in this matter by Anthony D. Scott, Esq., 120 Fisherman's Wharf, Redondo Beach, California 90277, (310) 376-0922.

3. At all times mentioned herein, Respondent has held a license as a trainer issued by the California Horse Racing Board, license number 11273, which expires on or about May 2011.

4. On January 17, 2008, Respondent was the trainer of the horse "Chicks Rule" which was regularly entered for the third race on that day ("The Race") at the Santa Anita Race Track, Santa Anita, California, which was then conducting a licensed race meeting. Respondent admits that Chicks Rule was a starter in the third race and finished in first place.

5. Approximately forty (40) minutes prior to the third race on January 17, 2008 at the Santa Anita Race Track a blood sample was taken from Chicks Rule under the supervision of the Official Veterinarian in accordance with CHRB Rules 1843.6 and 1859, subdivision (a), (Taking, Testing and Reporting of Samples). Said blood sample was sealed, labeled, and marked with the identification number TC 125742L.

6. Blood Sample number TC125742L was transported to the CHRB's official analytical laboratory, the University of California, Davis, Kenneth L. Maddy Equine Analytical Chemistry Laboratory, for analysis in accordance with CHRB Rule 1859, subdivision (a) (Taking, Testing and Reporting of Samples).

7. On or about January 23, 2008, Scott Stanley, Ph.D. of the University of California, Davis, Kenneth L. Maddy Equine Analytical Chemistry Laboratory tested blood sample no. TC 125742L determining that it contained 38.2 millimoles per liter of Total Carbon Dioxide (TCO2) exceeding the maximum level and informed the CHRB in accordance with CHRB Rule 1859, subdivision (c) (Taking, Testing and Reporting of Samples).

8. Respondent was notified of the TCO2 finding in excess of the maximum level of 37.0 mml/l of total carbon dioxide.

9. Respondent did not request a duplicate sample of blood sample number TC 125742L in accordance with CHRB Rule 1843.6 subdivision (a)(1).

10. The presence of a proscribed substance requires the disqualification of the horse pursuant to CHRB Rule 1859.5 and the forfeiture of the purse monies as a result of the first place finish in the third race at the Santa Anita Race Track, Santa Anita, California on January 17, 2008.

11. Pursuant to Government Code section 19517.5, the Respondent elected to adjudicate the proceedings before a hearing officer in CHRB Case No. 08SA069.

12. The Accusation in CHRB Case No. 08SA069 was filed before the CHRB, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on June 20, 2008. Respondent timely tendered a Notice of Defense contesting the Accusation.

13. Respondent waives the right to adjudicate these matters before a hearing officer or the Board of Stewards pursuant to Government Code section 19517.5.

14. Complainant and Respondent both agree that the above recitals correctly state the facts that resulted in the CHRB Investigation in CHRB Case No. 08SA069.

15. The Parties enter into this Agreement and Order in order to compromise the conflicting claims.

STIPULATED SETTLEMENT AGREEMENT

16. **Admission**. Respondent hereby stipulates and expressly admits to violations of CHRB Rules and Regulations 1887, subdivisions (a) and (b), 1843, 1843.1, and 1843.6 in CHRB Case No. 08SA069.

17. **Ex Parte Communications.**

A. Respondent waives the prohibition against *ex parte* communications between CHRB enforcement personnel and counsel and the CHRB commissioners and staff for the purpose of discussing this settlement.

B. Respondent agrees that CHRB enforcement personnel and counsel may discuss the merits of this case with the CHRB commissioners and staff without notice and without the opportunity for all parties to participate. Any such ex parte communication shall not prevent the CHRB from hearing this matter should this matter require a hearing before the CHRB.

C. Respondent has no objection to CHRB staff presenting this Stipulated Settlement to the Commissioners of the CHRB in closed session.

18. **Discipline**. As a result of the CHRB violations set forth in Paragraph 16, Respondent agrees to pay a fine of seven thousand five hundred dollars ($ 7,500) and serve a thirty (30) day suspension, which will be stayed pending a one (1) year probation. Respondent hereby voluntarily agrees to pay a fine in the sum of Seven Thousand Five Hundred Dollars ($7,500.00), by cashier's check payable to the California Horse Racing Board. Said payment is subject to the following terms and conditions:

A. Respondent shall make said payment concurrently with his execution of this Stipulated Settlement, which shall be no later than ten (10) days from the date the Stipulated Settlement was mailed to Respondent's counsel. Payment shall be sent to counsel for the CHRB as follows:

Jerald L. Mosley, Supervising Deputy Attorney General
Jasmine K. Bath, Deputy Attorney General
Office of the Attorney General
300 S. Spring Street, Suite 1700
Los Angeles, CA 90013

B. In the event that Respondent fails to timely make the payment specified herein, Respondent's license as a trainer issued by the California Horse Racing Board, license number 11273, shall be summarily suspended without further notice to Respondent. Said license shall remain suspended until such time as Respondent has made the required payment. If Respondent's license expires while he is under suspension, he will not be able to renew it until all sums are paid in full.

19. **Probation Order**. Respondent agrees to the terms of the Probation Order, *infra*, including a thirty (30) day suspension which is conditionally stayed, and he waives his right to a hearing as provided by Business and Professions Code section 19517.5 and all other statutes, regulations or laws with respect to any terms or subject matter of this Agreement and Order.

20. **Disqualification.** O'Neill acknowledges that the horse Chicks Rule has been, or will be, disqualified from The Race and deemed unplaced in The Race and that the purse awarded, or otherwise awardable, in connection with the performance of Chicks Rule in The Race has been,

or will be, redistributed in accordance with California Code of Regulations, Title 4, section 1859.5. O'Neill waives any objection to said disqualification and redistribution of the purse.

21. **Reporting of Violation.** Respondent further agrees and understands that the facts agreed to and the record of this Stipulated Settlement, including the payment of the fine of Seven Thousand Five Hundred Dollars ($7,500.00) and the thirty (30) day suspension, which is stayed pending satisfaction of the additional terms of this Agreement and Order, shall be entered in the official minutes of the CHRB and shall be included in Respondent's CHRB and ARCI License History. Respondent further agrees and understands that the finding of Total Carbon Dioxide in excess of the authorized decision level in Chicks Rule shall be reported as a Class 3 drug violation.

22. **Mutual Releases**

A. **Definitions.** The following definitions apply to this paragraph 22.

(i) "Claim" shall refer to claims, demands, liabilities, suits or damages of any type, known or unknown;

(ii) "CHRB" shall refer to The Board and its agents, assignees, successors, attorneys, representatives and former, current and future officers, employees agents and each of them;

(iii) "Respondent" shall refer to O'Neill, his successors, heirs, assignees, executors, successors, agents, attorneys representatives and each of them;

B. **Discharge.**

(i) CHRB and all others who may claim through it hereby release and forever discharge O'Neill from all Claims which CHRB ever had, now has or hereafter may have arising from or based upon facts or events occurring prior to the effective date of this Agreement and Order.

ii) Respondent and all others who may claim through him hereby release and forever discharge CHRB from any and all Claims which Respondent ever had, now has or hereafter may have arising from or based upon facts or events occurring prior to the effective date of this Agreement and Order.

C. **Unknown Claims.** The parties hereto acknowledge and agree that the above release and discharge applies to all Claims as defined above and thereby waive the application of California Civil Code section 1542 which reads as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

23. **Attorney Fees and Costs.** All parties hereto shall bear their own costs and attorney fees incurred in connection with the Accusation, including this Agreement and Order.

24. **Successors.** This Agreement shall inure to the benefit of, and be binding upon, each of the parties hereto as well as each party's respective successors and assigns.

25. **Governing Law.** Except where federal law is applicable, this Agreement and Order shall be construed and governed by the laws of the State of California.

26. **Advice of Counsel.** The parties hereto, and each of them, warrant and represent that in executing this Agreement they have relied upon legal advice from the attorney of their choice, that the terms of this Agreement and Order have been read and its consequences have been explained to the parties by their attorneys; and that the parties fully understand the terms of Agreement and Order.

27. **Ambiguities.** It is understood and agreed that the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement and Order as all parties are represented and advised by counsel.

28. **Entire Agreement.** This Agreement sets forth the entire agreement between the parties and fully supersedes any and all prior agreements or understandings, written or oral, between the parties pertaining to the subject matter hereof. Each party represents and warrants that no promise or inducement to enter into this settlement has been made that is not set forth in this Agreement.

29. **Counterparts and Facsimile.** This Agreement and Order may be executed in counterparts. The parties understand and agree that facsimile copies of this Agreement and

Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

30. **Effective Date.** This Agreement and Order shall become effective immediately upon execution of the Agreement by all parties thereto and execution of the Order by the CHRB.

IT IS SO STIPULATED

DATED: 10-3-08

DOUGLAS O'NEILL
Respondent

DATED: _____

KIRK BREED
Executive Director,
California Horse Racing Board

Approved as to form:

LAW OFFICES OF ANTHONY D. SCOTT

DATED: 10-3-08

BY _____
ANTHONY D. SCOTT
Attorneys for Respondent, Douglas O' Neill

EDMUND G. BROWN JR.
Attorney General

DATED: _____

BY _____
JASMINE K. BATH
Deputy Attorney General
Attorneys for Complainant,
California Horse Racing Board

Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

30. **Effective Date.** This Agreement and Order shall become effective immediately upon execution of the Agreement by all parties thereto and execution of the Order by the CHRB.

IT IS SO STIPULATED

DATED: _____

DOUGLAS O'NEILL
Respondent

DATED: 10/7/08

KIRK BREED
Executive Director,
California Horse Racing Board

Approved as to form:

LAW OFFICES OF ANTHONY D. SCOTT

DATED: _____

BY _____
ANTHONY D. SCOTT
Attorneys for Respondent, Douglas O' Neill

EDMUND G. BROWN JR.
Attorney General

DATED: 10/2/08

BY _____
JASMINE K. BATH
Deputy Attorney General
Attorneys for Complainant,
California Horse Racing Board

ORDER OF PROBATION

31. **The Fine.** IT IS HEREBY ORDERED that Respondent Doug O'Neill pay to the CHRB a fine in the amount of seven thousand five hundred dollars ($7,500) (the "Fine").

32. **The Suspension.** IT IS HEREBY ORDERED that Respondent Doug O'Neill serve a thirty (30) day suspension (the "Suspension").

33. **The Stay.** IT IS HEREBY ORDERED that the Suspension is stayed pending satisfaction of the additional terms of this Agreement and Order.

34. **Probation.** IT IS HEREBY ORDERED that the Respondent Doug O'Neill is hereby placed on probation for a term of one year.

35. **Conditions.** The following are the terms and conditions under which Respondent Doug O'Neill is placed on probation.

A. During the period of probation, Respondent must comply with California Code of Regulations, Title 4, sections 1843, 1843.6 and 1887 regarding Class 1, Class 2 or Class 3 substances as defined in section 1843.2.

B. At the expiration of the term of probation, if Respondent has not violated a condition of his probation, the CHRB shall dismiss the proceedings against Respondent and discharge him from probation.

C. If Respondent violates a condition of his probation, the above-referenced stay of the thirty (30) day suspension shall be lifted and Respondent will be required to serve said Suspension forthwith without further notice or hearing, and the CHRB may proceed in accordance with the provisions of California Code of Regulations, Title 4, section 1405. The lifting of the stay of said Suspension shall be independent of any other action taken against Respondent in connection with a violation of law or regulation during the probationary period.

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D. The terms of probation shall commence upon the execution of the Agreement by all parties thereto and execution of the Order by the CHRB.

IT IS SO ORDERED

DATED: 10/07/08

KIRK BREED
Executive Director,
California Horse Racing Board

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