

BEFORE THE CALIFORNIA HORSE RACING BOARD
OF THE STATE OF CALIFORNIA

In the Matter of:

Appeal of the Board of Stewards Official
Ruling #001, Hollywood Park Racing
Association, dated April 23, 2009

ARINDEL FARM (ALAN COHEN)
Appellant

Case No. SAC 09-0040
Case No. OAH 2009050891

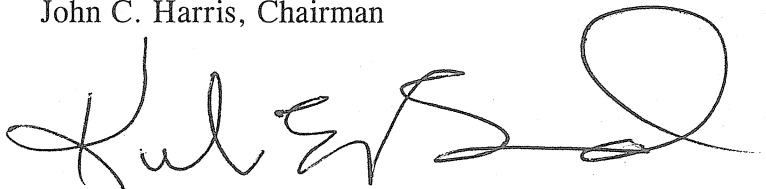
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the California Horse Racing Board as its Decision in the above-entitled matter.

The Decision shall become effective on November 18, 2009.

IT IS SO ORDERED ON November 17, 2009.

CALIFORNIA HORSE RACING BOARD
John C. Harris, Chairman



Kirk E. Breed
Executive Director

BEFORE THE HORSE RACING BOARD
STATE OF CALIFORNIA

In the Matter of:

ARINDEL FARM (ALAN COHEN),

Respondents.

CHRB Case No. 08HP0069

OAH Case No. 2009050891

2009 OCT 29 AM 9:14

RECEIVED
CHRB

PROPOSED DECISION

Daniel Juárez, Administrative Law Judge with the Office of Administrative Hearings, heard this matter on October 6, 2009, in Los Angeles, California.

Bruce W. Reynolds, Deputy Attorney General, represented the California Horse Racing Board (the CHRB).

Neil Papiano, Attorney at Law, Iverson, Yoakum, Papiano & Hatch, represented Arindel Farm (Alan Cohen) (Respondents).

The parties submitted the matter for decision on October 6, 2009.

FACTUAL FINDINGS

1. Respondents appeal the April 23, 2009 Official Ruling of the Board of Stewards, HRT#001.¹ In that Ruling, the Board of Stewards disqualified the thoroughbred racehorse, named Wait A While, from the Breeder's Cup Sixth Race at the Santa Anita Race Track, held on October 24, 2008, and forfeited its third place purse of \$213,000. The Board of Stewards took such action, pursuant to California Code of Regulations, title 4, section 1859.5, because urine samples from Wait A While tested positive for a Class 3 drug substance known as Procaine.

2. Respondents appealed timely. Respondents argue that: 1) the evidence in the underlying hearing was insufficient to establish the requirements of California Code of Regulations, title 4, section 1859.5; 2) the chain of custody of the tested urine sample (during transportation to the analyzing laboratory) was broken and thus, the unadulterated nature of the sample could not be established (Respondents argue similarly regarding the split sample's chain of custody); and 3) pursuant to California Code of Regulations, title 4, section 1760, the CHRB should have exercised its discretion and declined to forfeit Wait A While's purse.

¹ In that underlying hearing held before the Board of Stewards on April 15, 2009, Respondents and the CHRB were represented by counsel and had the opportunity to present evidence, examine witnesses, and provide legal argument.

3. The parties in the instant proceeding provided no additional evidence; both parties proffered legal argument, and submitted on the record of the April 15, 2009 hearing before the Board of Stewards.

4(a). The record in the April 15, 2009 hearing before the Board of Stewards established the findings set forth in Factual Findings 4(b) and 4(c) directly below.

4(b). The Maddy Laboratory at the University of California (U.C.) at Davis received Wait A While's primary urine sample for analysis. A split sample was sent to the Pennsylvania Equine Research Laboratory. Both laboratories found an excess quantity of Procaine, a Class 3 drug substance, in Wait A While's urine. Consequently, the Board of Stewards concluded that the existence of Procaine constituted a violation of the horse racing rules and a violation of California Code of Regulations, title 4, section 1859.5.

4(c). From October 24, 2008 (the day of the race), until October 25, 2008, Wait A While's urine and blood samples were secured in a freezer at Santa Anita Park. On October 25, 2008, the evidence clerk at Santa Anita provided Wait A While's urine and blood samples to an employee of the Maddy Laboratory, Kris Lomas (Lomas). Lomas took possession of the samples and drove an automobile from Santa Anita to the laboratory in Davis, California. Usually, samples are sent by Federal Express, but in this case, they were not. Releasing the samples to Lomas was an unusual occurrence in that such transportation by a laboratory employee had not been done before, however there was no evidence of any impropriety in the process used or in the actual transportation of the samples from Santa Anita to Davis, California.

5. Respondents argued at the underlying hearing, as they did in the instant proceeding, that the CHRB failed to establish the samples were not tampered with or that they were not otherwise adulterated in their handling and transportation by automobile. Respondents further argued that to prevail in the instant hearing, the CHRB must establish that the chain of custody had not been broken between Lomas' receipt of the samples and her reaching the laboratory in Davis, California. After considering Respondents' arguments on this point, and considering the evidence of how the samples were obtained and secured on October 24, 2008, and then provided to Lomas for transport to Davis on October 25, 2008, the Board of Stewards wrote in their Ruling, "Respondent attempted to discredit the chain of custody, however we find that the chain of custody was not interrupted and more than satisfactory."

LEGAL CONCLUSIONS

1. Cause exists to deny Respondents' appeal, pursuant to Business and Professions Code section 19517, as set forth in Factual Findings 1-5, and Legal Conclusions 2-7.

2. Business and Professions Code section 19517 states in part:

(a) The Board, upon due consideration, may overrule any steward's decision other than a decision to disqualify a horse due to a foul or a riding or a driving infraction in a race, if a preponderance of the evidence indicates any of the following:

(1) The steward mistakenly interpreted the law.

(2) New evidence of a convincing nature is produced.

(3) The best interests of racing and the state may be better served.

3. California Code of Regulations, title 4, section 1859.5, states in pertinent part:

A finding by the stewards that an official test sample from a horse participating in any race contained a prohibited drug substance . . . 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.

4. Respondents bear the burden of proof by a preponderance of the evidence. (Bus. & Prof. Code, § 19517, subd. (a).)

5. There was no evidence that the Board of Stewards mistakenly interpreted the law. (Bus. & Prof. Code, § 19517, subd. (a)(1).) There was no new evidence of a convincing nature to support Respondents' appellate arguments. (Bus. & Prof. Code, § 19517, subd. (a)(2).) The evidence in the record below established and supports the Board of Stewards' findings regarding the excess of Procaine in Wait A While. There was no evidence that the urine and blood samples were tampered with or otherwise adulterated. Wait A While's samples were properly obtained and secured on October 24, 2008, and properly provided to the U.C. Davis laboratory representative, Lomas. Evidence regarding the integrity of the samples once in Lomas' custody was not necessary, as providing the samples to Lomas equated to providing the samples to the laboratory itself. Without evidence that something occurred that would call the integrity of Lomas' custody into question, it was reasonable for the Board of Stewards to conclude that the chain of custody was secure and unbroken. Nothing in the record below suggests the contrary.

6. As the law requires disqualification (regardless of culpability) once a horse is found to contain a prohibited drug substance, the disqualification of Wait A While was proper. (Cal. Code Regs., tit. 4, § 1859.5.)

7. Respondents argue that the CHRB should have exercised its discretion and declined to forfeit the purse. However, the evidence established that Wait A While had an excess of Procaine, and the Board of Stewards found no merit in Respondents' arguments, including arguments of mitigation. Thus, neither the record below nor Respondents' arguments at the instant proceeding provided a persuasive reason to overrule the purse forfeiture. There was no evidence to support a conclusion that reversing the forfeiture would be in the best interests of horseracing or that California would be better served. (Bus. & Prof. Code, § 19517, subd. (a)(3).) Therefore, it is appropriate to sustain the Board of Stewards' Ruling and deny Respondents' appeal.

ORDER

Respondents' appeal is denied and the Board of Stewards' Official Ruling, HRT#001, dated April 23, 2009, is sustained.

Date: October 27, 2009



DANIEL JUAREZ
Administrative Law Judge
Office of Administrative Hearings