

**BEFORE THE HORSE RACING BOARD**

**STATE OF CALIFORNIA**

In the Matter of:

**Appeal of the Board of Stewards Official  
Ruling #007, Hollywood Park Racing  
Association, dated April 29, 2011**

Case No. SAC 11-0010  
OAH No. 2011090921

**PABLO SUAREZ  
CHRB License #272311  
Appellant**

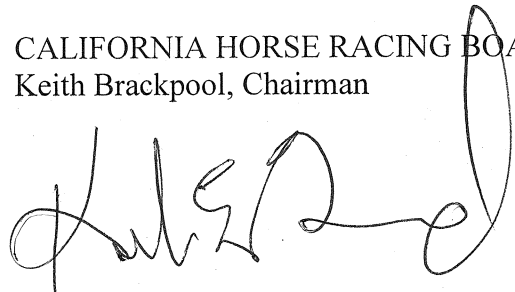
**DECISION**

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

The Decision shall become effective on March 23, 2012.

IT IS SO ORDERED ON March 22, 2012.

CALIFORNIA HORSE RACING BOARD  
Keith Brackpool, Chairman



Kirk E. Breed  
Executive Director

BEFORE THE  
CALIFORNIA HORSE RACING BOARD  
STATE OF CALIFORNIA

In the Matter of the Appeal from the Board of Stewards Official Ruling HRT#007, Hollywood Park Race Track, Order of Purse Redistribution, dated April 29, 2011, of:

PABLO SUAREZ,

Appellant.

Agency Case No.: SAC 11-0010

OAH No.: 2011090921

PROPOSED DECISION

This administrative appeal was heard on January 31, 2012, in Los Angeles, California, before Richard J. Lopez, Administrative Law Judge of the Office of Administrative Hearings.

Darren Shaffer, Deputy Attorney General, represented the California Horse Racing Board (CHRB or Board or Respondent).

Pablo Suarez, Appellant, appeared on behalf of the owners.

Oral and documentary evidence was received, argument was heard, and the matter was submitted for decision on January 31, 2012.

*Case Summary*

This matter involves an appeal from a Board of Stewards' (Stewards) Decision and Official Ruling disqualifying Appellant's horse as the first place finisher in the fifth race on February 5, 2011 at Santa Anita Park and requiring Appellant to return all purse monies from the race. The Statement of Decision and Official Ruling were issued as a result of a post-race urine sample taken from the horse on the day of the race that was found to have contained etodolac, a prohibited substance. Appellant appealed claiming that Rule 1843.3<sup>1</sup> was not properly considered by the Board and that there is no purse redistribution for an owner for a Penalty Class C violation.

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<sup>1</sup> See Legal Conclusion 9.

## FACTUAL FINDINGS

### *Parties*

1. The California Horse Racing Board (CHRB), Respondent herein, is mandated by the California Legislature to enforce the statutory and regulatory scheme involving the horse racing industry.

2. Pablo Suarez, Appellant, and others are owners of "Separate Forest," a race horse. At all times herein mentioned, Pablo and Michell Suarez (dba Suarez Racing Inc.) were licensed by the CHRB in the license category of owner; Mark Verge (dba Westside Rentals.com) was licensed by the CHRB in the license category of owner; Doug O'Neill was licensed by the CHRB in the license category of owner and trainer; and Patrick Valenzuela was licensed by the CHRB in the license category of jockey.

### *Procedure*

3. On February 23, 2011, Respondent CHRB filed a Complaint (number 11SA051) against Pablo Suarez for violation of CHRB Rule 1859.5 as a owner, license number 272311 alleging as follows:

On February 5, 2011, the horse "Separate Forest" trainer by Doug O'Neill was post race tested (sample SA09870), after finishing 1<sup>st</sup> in the 5<sup>th</sup> race at Santa Anita Race Track. Sample SA09870 was tested by U.C. Davis Laboratories and found to contain the Class 3 prohibited drug substance etodolac. Per Rule 1859.5 the horse will be disqualified and the purse be forfeited.

Appellant timely requested a hearing before the Stewards.

4. On April 28, 2011, a formal hearing was held before the Board of Stewards of Respondent to address the Complaint set forth in Finding 3. Appellant was present at the hearing.

5. On May 29, 2011, the Stewards issued its Statement of Decision of the Board of Stewards in the case. The Decision includes the Stewards' factual findings, applicable rules, reasoning, and an order that is referred to as Official Ruling HRT#007.

The Official Ruling states as follows:

Official Ruling  
Of the  
Board of Stewards

Hollywood Park Racing Association  
(Association)

April 29, 2011  
(Date)

HRTH #007

Acting on a report from the University of California, Maddy Analytical Laboratory, the official testing laboratory for the California Horse Racing Board, that urine sample #SA09870, obtained from the horse Separate Forest, the first place finisher in the fifth race at Santa Anita Park on February 5, 2011, contained the drug Etodolac (Class 3), it is ordered that Separate Forest be disqualified from all purse monies earned in said race in accordance with California Horse Racing Board Rule 1859.5 (Disqualification Upon Positive Finding).

It is further ordered that the purse money earned in said race (\$22,800.00) be returned by owners Doug O'Neill, Suarez Racing Inc., and Westside Rentals.Com (\$18,325.00), jockey Patrick Valenzuela (\$2,195.00) and trainer Doug O'Neill (\$2,280.00) to the Paymaster of Purses at Hollywood Park by May 30, 2011 for redistribution in accordance with the revised order of finish.

The revised order of finish is as follows:

- 1<sup>st</sup> Caged Mistress
- 2<sup>nd</sup> Fairway Road
- 3<sup>rd</sup> Candy's Pleasure
- 4<sup>th</sup> Lisa Lulu
- 5<sup>th</sup> Dislitleliteomine

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 any pari-mutuel pool shall be affected.

6. Appellant timely requested a hearing resulting in this proceeding. Respondent has met all pre-hearing jurisdictional requirements. Jurisdiction for the appeal does exist. Administrative proceedings before the Department are conducted in conformity with the provisions of the California Administrative Procedure Act, chapter 5, commencing with Government Code section 11500, *et seq.*

*Santa Anita's Fifth Race: February 5, 2011*

7. On February 5, 2011, the thoroughbred racehorse "Separate Forest" owned by Appellant ran and finished first in the fifth race at Santa Anita Park.

8. Following the running of the race, blood and urine samples were obtained from "Separate Forest" and transported to the University of California, Davis, Maddy Analytical Laboratory (Laboratory) the official testing Laboratory for the CHRB.

9. After testing the samples, the Laboratory reported that the post race urine sample #SA09870, which came from "Separate Forest," contained the drug substance etodolac.<sup>2</sup>

10. Etodolac is classified under the California Horse Racing Board rules and regulations as a Class 3 substance in the penalty class C. It is a prohibited drug substance.

11. Appellant made a timely request that a split sample be tested by the laboratory at Iowa State University, which was done and which confirmed the presence of etodolac.

*Supplemental Finding*

12. Appellant, acting in good faith throughout the pendency of the proceedings, had no knowledge that "Separate Forest" was administered or ingested etodolac at any time prior to the fifth race.

## LEGAL CONCLUSIONS

*Applicable Statutes*

1. Business and Professions Code section 19580 provides in full:

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<sup>2</sup> Etodolac is a Food and Drug Administration (FDA) approved substance in a class of drugs labeled nonsteroidal anti-inflammatory (NSAIDs). FDA sanctioned the drug for use in 1991. It is FDA-approved for humans and dogs, not horses.

- (a) The board shall adopt regulations to establish policies, guidelines, and penalties relating to equine medication in order to preserve and enhance the integrity of horse racing in the state. Those policies, guidelines, and penalties shall include, at a minimum, the provisions set forth in this article.
- (b) It is the intent of the Legislature that the board, in its testing efforts to determine illegal or excessive use of substance, recognize the greater importance of conducting complete and thorough testing of a lesser number of samples in preference to conducting less thorough testing on a greater number of samples.

2. Code section 19581 provides in full:

No substance of any kind shall be administered by any means to a horse after it has been entered to race in a horse race, unless the board has, by regulation, specifically authorized the use of the substance and the quantity and composition thereof. The board may require that the official veterinarian approve, in writing, the administration of those substances in accordance with the regulations of the board. Any medication or equipment used to dispense medication that is located within the inclosure is subject to search and inspection at the request of any board official.

*Applicable Rules*

3. Consistent with Code section 19580, subdivision (a) the CHRB adopted a number of regulations found in California Code of Regulations, title 4, which include the following regulation sections (Rules) that follow.

4. Rule 1843.2 (Classification of Drug Substances) provides:

The Board, the board of stewards, the hearing officer, or the administrative law judge, when adjudicating a hearing for a violation of Business and Professions Code section 19581, shall consider the classification of the substance as referenced in the California Horse Racing Board (CHRB) Penalty Categories Listing by Classification (Revised 08/08), hereby incorporated by reference, which is based on the

Association of Racing Commissioners International (ARCI)<sup>3</sup>  
Uniform Classification Guidelines for Foreign Substances  
(4/05), as modified by the Board.

5. Rule 1859.5 (Disqualification upon Positive Test Finding) provides:

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

*Application of Law to Facts*

6. Consistent with Rule 1843.2 the classification of etodolac set forth in Finding 10 is referenced in the CHRB Penalty Categories Listing by Classification (Revised 08/08). That Listing states that etodolac (Trade Name Lodine) may or may not have generally accepted use in the racing horse.

7. Entodac is a Class 3 drug (Finding 10). "Separate Forest" tested positive for a Class C drug (Finding 9). The split sample confirmed the presence of a Class 3 drug (Finding 11). Accordingly, the presence of etodolac in "Separate Forest" is a violation of Rule 1859.5. The application of the Rule mandates disqualification and redistribution of the purse.

8. Cause exists to confirm Official Ruling HRT#007 set forth in Finding 5 by reason of Legal Conclusion 7.

*Appellant's Contentions*

9. Appellant argues, in sum, that Rule 1843.3<sup>4</sup> takes precedence over Rule 1859.5. Rule 1843.3 addresses *penalties* which are not in issue in this case.

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<sup>3</sup> ARCI classifies etodolac as a Class 3 medication on its five-tiered scale (Class 1 drugs are strongest, Class 5 the weakest).

<sup>4</sup> Rule 1843.3 states in relevant part:

10. *Lavin v. California Horse Racing Board* (1997) 57 Cal. App. 4<sup>th</sup> 263 is the leading authority on the CHRB's authority to summarily disqualify a winning horse after a positive drug test result. In *Lavin*, a post race test revealed a prohibited drug in the winning horse. The CHRB initiated an administrative proceeding and the Stewards' decision was adverse to the owner and trainer. On appeal to the Administrative Law Judge, the Judge exonerated the trainer for lack of culpability, but still disqualified the horse and ordered forfeiture of the purse under Rule 1859.5. The owner filed a petition for writ of mandate which the trial court granted finding that Rule 1859.5 conflicted with the CHRB's empowering legislation. (Business and Professions Code section 19582.5). The appellate court disagreed and reversed.

11. The appellate court in *Lavin* held that the CHRB had the power to enact a no tolerance rule for drugs in horses and the CHRB was not required to determine culpability prior to a disqualification order. (*Lavin, supra*, 57 Cal. App. 4<sup>th</sup> at 269-270). In fact, the court stated that a hearing was not required before the CHRB ordered disqualification as long as a positive drug test result was reported. (*Id.*, at 273). As such, the court rejected the owner's argument that discretion must be exercised before the CHRB issued a disqualification order. The court stated:

[A] general rule of blanket qualification is the most effective statutory implement to accomplish its objective of allowing only drug-free horses to race. A rule which pronounces unequivocally that any contaminated horse will not be permitted to win a race is consistent with the Board's responsibility to protect the integrity of the sport of horse racing and is, therefore, not unreasonable. We find that, contrary to the urging of the Respondents, this strict rule is consonant with the provisions of the Horse Racing Law.

(*Lavin, supra*, 57 Cal. App. 4<sup>th</sup> at 270.)

12. In pertinent sum *Lavin* directly endorses Rule 1859.5 as necessary in the public interest, despite its seemingly harsh consequences, irrespective of culpability. It is a clear, concise Rule applied clearly and concisely by the Stewards.

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(a) In reaching a decision on a penalty for a violation of Business and Professions Code section 19581, the Board, the board of stewards, the hearing officer or the administrative law judge shall consider the penalties set forth in subsections (d) and (e) of this Rule and any aggravating and mitigating circumstances. Deviation from these penalties is appropriate where the facts of the particular case warrant such a deviation, for example: there may be mitigating circumstances for which a lesser or no penalty is appropriate, and aggravating factors may increase the penalties beyond the minimum.

(b) Mitigating circumstances and aggravating factors, which must be considered, include but are not limited to: . . .



ORDER

The appeal of Pablo Suarez from the Statement of Decision and Official Ruling HRT# #007 of the Board of Stewards, Case No. 10HOP090 is denied. Said Ruling is affirmed in its entirety.

Dated: February 29, 2012



RICHARD J. LOPEZ  
Administrative Law Judge  
Office of Administrative Hearings

RJL:ref