

FILED
Department of Business and Professional Regulation
Deputy Agency Clerk
CLERK Brandon Nichols
Date **6/26/2009**
File #

IN THE DEPARTMENT OF BUSINESS
PROFESSIONAL REGULATION, DIVISION
OF PARI-MUTUEL WAGERING

KIRK ZIADIE,

Case No. 2007025004

Defendant/Appellant,
v.

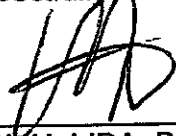
DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,
DIVISION OF PARI-MUTUEL
WAGERING,

Plaintiff/Appellee.

NOTICE OF ADMINISTRATIVE APPEAL

NOTICE IS GIVEN that Kirk Ziadie, Appellant, appeals to the First District Court of Appeal, the Order of The Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, rendered the 18th day of June, 2009, in Tallahassee, Florida (See attached Order). The nature of the order is a final order suspending the Appellant's trainers license for sixty days.

Respectfully submitted,



CARL H. LIDA, P.A.
Florida Bar No. 200700
Counsel for KIRK ZIADIE
8751 West Broward Boulevard
Suite 305
Plantation, Florida 33324
Telephone (954) 472-5001
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RECEIVED
JUN 26 2009
DBPR Agency Clerk

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of June, 2009, the original hereof has been furnished by Federal Express to: Sarah Wachman, Agency Clerk, Department of Business and Professional Regulation, Division of Pari-Mutuel Wagering, 1940 North Monroe Street, Tallahassee, Florida 32399, and to the Clerk of the Court, First District Court of Appeal, 301 S. Martin Luther King Jr. Blvd., Tallahassee, Florida 32399.

By: 
CARL H. LIDA, ESQUIRE

FILED	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	6/18/2009
File #	2009-04977

STATE OF FLORIDA
DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION
DIVISION OF PARI-MUTUEL WAGERING

DEPARTMENT OF BUSINESS &
PROFESSIONAL REGULATION,
DIVISION OF PARI-MUTUEL WAGERING,

-- Petitioner,

DBPR Case No. 2007025004

v.

KIRK M. ZIADIE,

Respondent.

FINAL ORDER

THIS MATTER came before the Presiding Officer of the Division of Pari-Mutuel Wagering on April 1, 2009, in Tallahassee, Florida, in accordance with the provisions of Section 120.57(2), Florida Statutes, for consideration of the division's Administrative Complaint issued against Kirk M. Ziadie (Respondent) in DBPR Case No. 2007025004. The Division of Pari-Mutuel Wagering was represented by David N. Perry, Assistant General Counsel. Respondent appeared pro se by telephone.

PRELIMINARY STATEMENT

1. On or about October 15, 2008, the Division of Pari-Mutuel Wagering issued an Administrative Complaint against the Respondent which alleged that he had violated Section 550.2415(1)(a), Florida Statutes, and Rule 61D-6.011(2), Florida Administrative Code, by being the trainer of record for a racing thoroughbred which tested positive for Acepromazine, a Class 3 impermissible substance.

2. Respondent was served with the Administrative Complaint via hand service on January 14, 2009. Respondent's Election of Rights was due to the division by February 4, 2009. On February 9, 2009, the division filed its Motion for Final Order. On February 18, 2009, the division received Respondent's Election of Rights form. Although received past the due date, the division agreed to grant Respondent's request for an informal hearing pursuant to Section 120.57(2), Florida Statutes. The Respondent's Election of Rights indicates that Respondent's address is 4611 S. University Drive, Box # 237, Davie, FL 33328.

3. At the informal hearing on April 1, 2009, the division presented the issues raised in its October 15, 2008, Administrative Complaint and cited the Respondent's Election of Rights signed on or about February 17, 2009. The division noted that, although Respondent had checked the option requesting a formal hearing, he had written "requesting an informal hearing" in the space provided. In addition, Respondent had waived his right to a formal hearing at DOAH by failing to send his Election of Rights within the prescribed time.

4. At the informal hearing, Respondent did not dispute the material facts of the case. Further, the Respondent confirmed on the record that he did not dispute the material facts in the case.

FINDINGS OF FACT

5. At all times material hereto, Respondent held a pari-mutuel wagering trainer/ thoroughbred license, number 701515-1021, issued by the division.

6. At all times material hereto, Respondent worked at Gulfstream Park ("Gulfstream").

7. Gulfstream is a facility operated by a permit holder authorized to conduct pari-mutuel wagering in this state.

8. At all times material hereto, Respondent was the trainer of record for the thoroughbred "NOT ACCLAIM".

9. Acepromazine is a tranquilizer and a Class 3 drug under the Uniform Classification Guidelines for Foreign Substances, as promulgated by the Association of Racing Commissioners International.

10. Respondent was the trainer of record and the absolute insurer of the condition of a thoroughbred named "NOT ACCLAIM" on March 19, 2007. On March 19, 2007, "NOT ACCLAIM" was entered in the ninth race at Gulfstream.

11. "NOT ACCLAIM" finished first in the ninth race at Gulfstream on March 19, 2007. "NOT ACCLAIM" was immediately thereafter sent to a division employee for the taking of a urine sample.

12. Urine sample number 193728 was collected from "NOT ACCLAIM" and was processed in accordance with established procedures and forwarded to the lab for analysis.

13. The University of Florida Racing Laboratory tested urine sample number 193728, and found that it contained Acepromazine, a tranquilizer and Class 3 drug, in a concentration of 40 nanograms per milliliter. These results were issued to the division in a report dated April 19, 2007. The division follows the recommendation of the University of Florida Racing Laboratory, by setting a urine threshold of 10 ng/ ml for Acepromazine.

14. Prior to the instant case, Respondent accumulated twelve previous violations of Section 550.2415, Florida Statutes, in the following DBPR case numbers:

- a. 2004028212 (Flunixin, Class 4 drug. \$100 fine)
- b. 2004057550 (Glycopyrrolate, Class 3 drug. \$500 fine and 15 day suspension)
- c. 2004060610 (Glycopyrrolate, Class 3 drug. \$500 fine)
- d. 2005030701 (Clenbuterol, Class 3 drug. \$300 fine)
- e. 2005064692 (Phenylbutazone, Class 4 drug. \$250 fine)
- f. 2006005191 (Dimethyl Sulfoxide, Class 5 drug. \$100 fine)
- g. 2006006449 (Dimethyl Sulfoxide, Class 5 drug. \$1,000 fine)
- h. 2006007718 (Dimethyl Sulfoxide, Class 5 drug. \$250 fine)
- i. 2006019839 (Phenylbutazone/ Oxyphenbutazone, Class 4 drug. \$500 fine)
- j. 2006060434 (Phenylbutazone, Class 4 drug. \$1,000 fine)
- k. 2006067518 (Phenylbutazone, Class 4 drug. \$100 fine)
- l. 2007008307 (Clenbuterol, Class 3 drug. \$250 fine)

15. At the hearing on April 1, 2009, Respondent stated that he never administered drugs to horses in order "to make horses run faster." He admitted he has given horses Acepromazine on race day to affect their performance; specifically, to settle them at the starting gate. Such use of Acepromazine is uniformly prohibited. He stated that he did not administer Acepromazine to "NOT ACCLAIM" on race day, and he does not know how the horse acquired the prohibited substance.

16. Respondent spoke about his affection for his horses, and his desire to race them for a long time. He compared the treatment of his horses to other trainers, who used medications in an effort to get the "big win".

17. Respondent testified that one reason for all of his drug positives, was that his accounting and management is "in chaos". He stated that he has since hired a new accountant.

18. Respondent testified he has had a PMW license for about six years. The drug cases against him began in 2004, five years ago. Although the fines and suspensions have increased, Respondent's horses continue to test positive for prohibited substances.

19. Despite his request for leniency, Respondent presented no evidence that would compel the division to mitigate the penalty. He stated that he hired a new accountant, to reduce the chaos in his business, but then he testified that he recently received a 21-day suspension for a recent drug positive.

20. The division cannot use evidence of subsequent drug violations to aggravate the penalty under the guidelines laid out in Rule 61D-6.011(2), Florida Administrative Code. However, Respondent volunteered this information in testimony.

21. Based on Respondent's continuous behavior, Respondent considers these ongoing penalties the price of doing business in the racing industry.

22. There is competent substantial evidence to support the findings of fact.

CONCLUSIONS OF LAW

23. Section 550.2415(1)(c), Florida Statutes, states "[t]he finding of a prohibited substance in a race-day specimen constitutes prima facie evidence that the

substance was administered and was carried in the body of the animal while participating in the race.”

24. Rule 61D-6.011(2), Florida Administrative Code, provides as follows:

(2) Pursuant to Rule 61D-6.002, F.A.C., the trainer of record is the absolute insurer of the condition of an animal he or she enters to race. Consequently, when evidence of the presence of an impermissible substance, or substances, is presented either to the Division or to a panel of stewards or judges, the division or the stewards or judges, absent aggravating or mitigating circumstances, must impose on the trainer of record one or more of the following penalties in accordance with the class of impermissible substance. Provided, however, that any discipline imposed by the stewards or judges shall not exceed their authority pursuant to Section 550.1155, F.S.

(a) Class I impermissible substances:	
1. First violation	\$500 to \$1,000 fine, suspension or revocation of license;
2. Any subsequent violation	\$1,000 to \$5,000 fine, suspension or revocation of license.
(b) Class II impermissible substances:	
1. First violation	\$100 to \$1,000 fine, suspension of license up to 30 days;
2. Second violation within 36 months of a previous violation	\$250 to \$1,000 fine, suspension or revocation of license;
3. Third violation within 36 months of a second violation, or a fourth or any subsequent violation without regard to the time past since the third violation	\$500 to \$1,000 fine, suspension or revocation of license.
(c) Class III impermissible substances:	
1. First violation	\$100 to \$500 fine;
2. Second violation within 12 months of a previous violation	\$250 to \$750 fine, suspension of license up to 30 days;
3. Third violation within 24 months of a second violation, or a fourth or any subsequent violation without regard to the time past since the third violation	\$500 to \$1,000 fine, suspension of license up to 60 days.
(d) Class IV or V impermissible substances:	
1. First violation	Reprimand, \$100 to \$250 fine;
2. Second violation in a 12 month period	\$250 to \$500 fine;

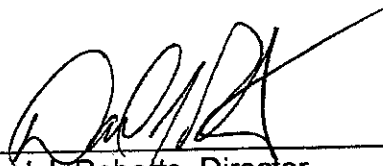
3. Third or subsequent violation in a 12 month period	\$500 to \$1,000 fine, suspension of license up to 30 days.
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25. Section 550.2415(1)(a), Florida Statutes, provides, "[t]he racing of an animal with any drug, medication, stimulant, depressant, hypnotic, local anesthetic, or drug-masking agent is prohibited. It is a violation of this section for a person to administer or cause to be administered any drug, medication, stimulant, depressant, hypnotic, narcotic, local anesthetic, or drug-masking agent to an animal which will result in a positive test for such substance based on samples taken from the animal immediately prior to or immediately after the racing of that animal."

26. There is competent substantial evidence to support the conclusions of law.

WHEREFORE, based upon the Findings of Fact and Conclusions of Law, it is hereby ORDERED and ADJUDGED that: (a) Respondent shall pay an administrative fine of one thousand dollars (\$1,000.00); and (b) Respondent's license/certificate as a trainer is suspended for sixty (60) days, and thereafter until Respondent complies with all previous final orders issued by the department. This Final Order shall become effective on the date filed with the Agency Clerk.

DONE AND ORDERED this 15TH day of JUNE, 2009.



 David J. Roberts, Director
 Division of Pari-Mutuel Wagering
 Department of Business and
 Professional Regulation
 1940 North Monroe Street
 Tallahassee, Florida 32399-1035


NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

Unless expressly waived, any party substantially affected by this final order may seek judicial review by filing an original Notice of Appeal with the Clerk of the Department of Business and Professional Regulation, and a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal within thirty (30) days rendition of this order, in accordance with Rule 9.110, Fla. R. App. P., and Section 120.68, Florida Statutes.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Final Order has been provided by Certified Mail to KIRK M. ZIADIE, 4611 S. University Drive, #237, Davie, Florida 33328, on this 18th day of June, 2009.

SARAH WACHMAN, AGENCY CLERK


Brandon Nichols, Deputy Agency Clerk

Copies furnished to:
Reginald D. Dixon, Informal Hearing Officer
David N. Perry, Assistant General Counsel