

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:
**Appeal of the Board of Stewards Official
Ruling #012, Santa Anita Autumn Meet,
dated October 4, 2015**

Case No. SAC 15-0049

JULIO CANANI
**CHRB Licenses #084983, #101896 and
#260180**
Appellant

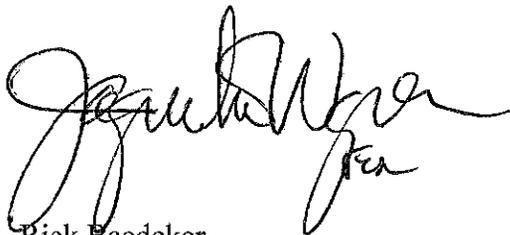
DECISION

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 July 18, 2016.

IT IS SO ORDERED ON July 14, 2016.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman

A handwritten signature in black ink, appearing to read "Rick Baedeker". The signature is stylized and cursive.

Rick Baedeker
Executive Director

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In the Matter of:
Appeal of the Board of Stewards Official
Ruling # 012, Santa Anita Autumn Meet,
dated October 4, 2015

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(PROPOSED) RULING ON
APPEAL

JULIO CANANI
CHRB Licenses # 084983, #101896 and
#260180
Appellant

1. INTRODUCTION

Appellant, Julio Canani (hereinafter "Mr. Canani" or "Appellant"), is a thoroughbred horse trainer and owner (as "Tarma Corporation") licensed by the California Horse Racing Board (hereinafter "CHRB"). On or about October 4, 2015, his licenses were suspended pursuant to CHRB Rule 1489 (Grounds for Denial or Refusal of License) and for violation of CHRB Rule 1902 (Conduct Detrimental to Racing) after a hearing by the Board of Stewards at the Santa Anita Autumn Meet. The period of suspension began on October 26, 2015, and is scheduled to continue through the term of his license (November 30, 2016). During the term of suspension, all licenses and license privileges of Mr. Canani are suspended and, pursuant to CHRB Rule 1528 (Jurisdiction of Stewards to Suspend or Fine), Mr. Canani is denied access to all premises in this jurisdiction.

Before being relicensed Mr. Canani will be required to participate in a fitness for license hearing.

Mr. Canani, through his attorney, timely filed an appeal of the suspension and sought to have it stayed by the CHR B during the pendency of the instant suspension. The CHR B denied his request.

The hearing on the Appeal was noticed for May 10, 2016, before the CHR B designated Hearing Officer. A hearing, with all parties and their designated legal representatives present¹, was duly held pursuant to Notice and the case was argued and submitted to the Hearing Officer for decision. The Hearing Officer was provided with the Certified Administrative Record ("CAR") and received two(2) exhibits from the Appellant, a copy of Amended Judgment² and a copy of the Minute Order in Lockwood v. CHR B, LASC Case #BS147701. The CHR B filed a Hearing Brief.

2. GROUNDS FOR APPEAL

Appellant appeals the Steward's Decision on the following grounds:

A. The doctrine of collateral estoppel does not establish facts determining the issues raised in the CHR B complaint because the Amended Judgment, filed in the underlying civil case, does not establish that Appellant committed acts which violate the CHR B Rules 1489 and 1902.

B. Business and Profession Codes sections 481 and 482 require the CHR B to develop criteria to aid it when it is considering the suspension of a license, to determine whether the crime or act is substantially related to the

¹ Mr. Canani was present with his attorney, John V. Gaule, Esq.; The CHR B was represented by Assistant Deputy Attorney General Darren Shaffer and CHR B Staff Counsel Philip J. Laird; the hearing was transcribed by Michelle E. Derieg, Hearing Reporter; and one other person attended: Lydia Rivas.

² The Amended Judgment is identified as Exhibit "7" in the CAR.

qualifications, functions, or duties of Mr. Canani's business or profession, and, in the absence of such criteria, the Stewards did not have authority to suspend Mr. Canani.

3. THE UNDERLYING CIVIL CASE

Everest Stables, Inc., a Minnesota Corporation, sued in the United States District Court for the Central District of California, pursuant to diversity jurisdiction, seeking monetary and punitive damages against Mr. Canani and others for, among other causes of action, breach of fiduciary and agency duties, fraud, unjust enrichment, violation of California Bus. and Prof. Code section 19525, civil conspiracy and theft by false pretenses.

On or about June 28, 2012, a jury rendered a verdict against Mr. Canani in which it answered 29 separate questions regarding the allegations against him and also determined damages. In answer to certain of those questions the jury determined that Mr. Canani acted as an agent with respect to matters involving Everest's horses and, as to eight (8) of the horses, "breached his fiduciary and agency duties to Everest Stables by misrepresenting the horses' condition or misrepresenting and concealing his role and involvement in order to convince Everest Stables to sell the horses at lower prices." (CAR Exhibit "5", Questions 4 & 5). Mr. Canani also "unlawfully concealed and misrepresented his role and involvement with respect to or misrepresent with fraudulent intent their true physical condition to the purchase of two (2) horses." (CAR Exhibit 5, Question 8). As to six (6) additional horses, Mr. Canani, "unlawfully concealed and misrepresented his role and involvement with respect Tarma Corporation or misrepresent with fraudulent intent their true physical condition." (CAR Exhibit 5, Question 9). He also "conspired with another to fraudulently induce Everest

fraudulently induce Everest Stables to sell two (2) of the horses at a price below the true value of each of the horses.” (CAR Exhibit 5, Question 12). He “obtained, and unjustly retained financial benefits from the sale of certain of the horses and thereby deprived Everest Stables of the property or true value of the property.” (CAR Exhibit 5, Questions 14 & 15).

The jury assessed \$84,687.50 in compensatory damages against Mr. Canani and his company, Tarma Corporation, including \$37,500 in punitive damages, plus an additional \$6,250 against Mr. Canani and another defendant. (CAR Exhibit 5, Questions 26-29).

On or about July 31, 2012, a formal judgment on Special Verdict, reflecting the above findings and damage award, among other things, was signed by the trial judge. (CAR Exhibit 6).

Thereafter on or about November 6, 2012, the trial judge signed an Amended Judgment which did not contain the determinations made by the Jury but was specific as to the damages assessed against each of the defendants, including Mr. Canani. (CAR Exhibit 7).

An appeal of the Amended Judgment was taken by Everest Stables in the US District Court but was dismissed on December 17, 2014. (CAR Exhibits 8-10).

4. THE BOARD OF STEWARDS' ACTION

The CHRB filed a complaint (CAR Exhibit 1) against Mr. Canani, both as a trainer and as an owner (Tarma Corporation), alleging violation of CHRB Rules 1902 (Conduct Detrimental to Racing) and 1489(g) (Grounds for Denial or Refusal of License). The complaint alleged that Mr. Canani was found to be civilly liable by the United States District Court for the Central District of California for

breach of fiduciary and agency duties, fraud, civil conspiracy and unjust enrichment. The filing alleged that Mr. Canani fraudulently benefitted from the sale of several horses in his care and owned by Everest Stables Inc.

Present at the hearing were the Board of Stewards (Scott Chaney, Kim Sawyer, and Tom Ward), Mr. Canani representing himself³, Deputy Attorney Darren Shaffer representing the CHRB, and CHRB Supervising Investigator Rick Amieva.

The Stewards made the following factual findings:

I

At all times herein mentioned, Mr. Canani was licensed by the CHRB in the license category of trainer. Respondent also holds an owners license and does business as Tarma Corporation.

II

Before June 2012, Everest Stable Inc., (hereinafter "Everest") a licensee of the CHRB, filed a civil court claim against Respondent (and others) under several causes of action with respect to the sale of thoroughbred racehorses owned by Everest and trained by Mr. Canani.

III

On June 28, 2012, a U.S. District Court jury found Respondent liable for fraud, breach of fiduciary duty, conspiracy and unjust enrichment. The jury awarded both actual damages and punitive damages for these findings.

IV

Specifically, the jury found Mr. Canani liable because he misrepresented and concealed the true physical condition of horses owned by Everest in order to benefit financially.

At the hearing the CHRB relied solely on documentary evidence from the civil court trial to establish the allegations of their complaint. They conducted an analysis as to whether the facts determined by the jury in the civil case

³ A lay person, who is not indigent, and who exercises the privilege of trying his own case must expect and receive the same treatment as if represented by an attorney -- no different, no better, no worse. Taylor v. Bell (1971) 21 Cal App. 3d 1002.

established violations of the two Rules (1489 & 1905). The Stewards used the doctrine of collateral estoppel to reach the above findings.

Their Discussion of Issues states:

With respect to the Conduct Detrimental to Racing allegation, the CHRB specifically cites subsection (c) "solicitation of or aiding and abetting any other person to participate in any act or conduct prohibited by this Division." While the jury did find Respondent was liable for conspiracy, to this Board of Stewards, conspiracy is not enough to trigger a "solicitation of or aiding and abetting" finding that subsection (c) requires. Rather, the jury findings do seem to prove a violation of the general introduction to this rule which states that "[n]o licensee shall engage in any conduct prohibited by this Division nor shall any licensee engage in any conduct which by its nature is detrimental to the best interests of horse racing..." After all, one licensee defrauding and breaching a fiduciary duty to another licensee seems to embody the definition of conduct detrimental to horse racing.

and

The CHRB also alleged violation of rule 1489(g), averring that Respondent "has committed an act involving moral turpitude, or intemperate acts which have exposed others to danger, or acts in connection with horse racing and/or a legalized gaming business which were fraudulent or in violation of a trust or duty." This requires scant analysis because a civil fraud and breach of duty finding in connection with the sale of horses mirrors the exact language found in rule 1489(g). Therefore we find a clear violation of this rule. Having said that, this Board of Stewards is not permitted by rule to deny or revoke a licensee's license; that power is instead reserved to the Board. Rule 1900 (Grounds for Suspension or Revocation) provides that "[a]ny provision of any rule is a ground for denial of a license is also a ground for suspension or revocation of a license."

The Stewards then concluded:

Respondent's licensure record is fairly void of serious violations and his reputation as a horse trainer speaks for itself. However, the civil court jury findings leave us no choice in this matter. We are somewhat troubled by the fact that Mr. Canani was not represented by counsel in our hearing but this shortcoming is not consequential to our decision for two reasons: (1)

the record demonstrates that we took great pains in giving Mr. Canani the opportunity to be represented and in impressing upon him the seriousness of the allegations; and (2) Mr. Canani was competently represented in the civil case and frankly, that decision is the foundation for our decision. Respondent's defense was twofold: (1) he asserted that he won the civil case—which is simply untrue; and (2) that he did not commit the violations alleged—which is clearly at odds with the findings of the jury. It is also at odds with what we find in the matter at hand.

Based on this reasoning the Stewards ordered the suspension of Mr. Canani's licenses for the balance of their term (i.e., October 26, 2015- November 30, 2016) and refused Mr. Canani access to any CHRB licensed enclosure during that time. Upon the expiration of the term of the suspension Mr. Canani will be required to undergo a fitness for licensure hearing before being relicensed.

5. APPLICATION OF THE DOCTRINE OF COLLATERAL ESTOPPEL

For collateral estoppel to apply, the following must be shown:

- (1) The issues raised in the present proceeding are identical to the issues litigated in a prior case;
- (2) The prior case resulted in a final judgment on the merits; and
- (3) The party against whom the doctrine is being asserted was a party, or in privity with a party, to the prior case. People v. Burns (2011) 198 Cal. App. 4th 726, 731.

It is without question that Mr. Canani was a party to the Everest Stables lawsuit or that case was litigated to a final judgment on the merits. Therefore doctrine of collateral estoppel will apply to the Board of Stewards hearing if the issues raised in the present proceeding are identical to the issues litigated in the prior case. (*Ibid.*)

The Erie doctrine, based on a U.S. Supreme Court case, Erie Railroad Co. v. Tompkins, 304 U.S. 64 (1938), states that the federal courts, when confronted with the issue of whether to apply federal or state law in a lawsuit, must apply state law on issues of substantive law. The underlying civil case applied California law and, as pointed out by the Stewards, the issues resolved therein directly reflect applicable sections of codified Horse Racing Law⁴.

In applying collateral estoppel, courts may consider whether the party against whom the earlier case was decided had a “full and fair” opportunity to litigate the issue. Roos v. Red (2005) 130 Cal.App.4th 870, 880. “[T]he courts have recognized that certain circumstances exist that so undermine the confidence in the validity of the prior proceeding that the application of collateral estoppel would be ‘unfair’ to the defendant as a matter of law.” (*Ibid.*) These circumstances exist “if there is reason to doubt the quality, extensiveness, or fairness of procedures” in the prior litigation. (*Ibid.*, quoting Kremer v. Chemical Construction Corp. (1982) 456 U.S. 461, 481.)

Comparison of the Judgment on Special Verdict and the Amended Judgment shows that the damages awarded by the jury is consistent between the two except that the punitive damage award has been deleted from the later⁵.

A special verdict is that by which the jury find the facts only, leaving the judgment to the Court. The special verdict must present the conclusions of fact as established by the evidence, and not the evidence to prove them; and those conclusions of fact must be so presented as that nothing shall remain to the

⁴ Horse Racing Law is codified in Division 8, Chapter 4 of the Business and Professions Code and Title 4, Division 4 of the California Rules and Regulations.

⁵ The Assistant Attorney General argued at the appeals hearing that the reason that the punitive damage award was not embodied in the Amended Judgment was that the jury was not provided evidence of the defendant’s financial worth in order to evaluate the appropriate amount of the punitive damage award. See Transcript of Proceedings, Page 15, lls. 5-18.

Court but to draw from them conclusions of law. (Code of Civil Procedure section 624).

Our Supreme Court in Murray v. Alaska Airlines, Inc., (2010) 50 Cal.4th 860, 867, 114 Cal. Rptr. 3d 241 concluded that collateral estoppel . . . involves a second action between the same parties on a different cause of action. The first action is not a complete merger or bar, but operates as an estoppel or conclusive adjudication as to such issues in the second action which were actually litigated and determined in the first action. (*Id.*, § 197, at p. 3335.)’ (Preciado v. County of Ventura (1982) 143 Cal.App.3d 783, 786-787, fn. 2.)” (Rymer v. Hagler (1989) 211 Cal.App.3d 1171, 1178.)

The deletion by the Judge in the underlying case of the award of punitive damages does not mean that there was not a full and fair hearing of the issues common to both cases. The civil jury evaluated the evidence and therefrom resolved the factual issues that were later incorporated by the Court into the Amended Judgment. However that portion of the jury’s findings that were not part of the judgment, i.e., the punitive damage award, has no bearing on the issues that were determined in the Board of Steward’s case⁶.

In order to ascertain if the issues resolved in the civil case were the same as those in the Board of Stewards Hearing, the Stewards correctly considered the (Third Amended) Complaint, the Verdict and the Judgment on Special Verdict, in addition to the Amended Judgment⁷. Otherwise they could not understand what issues were resolved in the former litigation. These conclusions

⁶ Since Mr. Canani was represented by counsel in the underlying case (who did not file an appeal) it can reasonably be concluded that his counsel found no error in the jury’s findings that would necessarily require an appeal.

⁷ The Stewards stated, “a civil fraud and breach of duty finding in connection with the sale of horses mirrors the exact language found in rule 1489(g).” In addition, as is discussed in the next section of this opinion, Business and Professions Code section 19525 has direct application to the facts resolved by the civil jury.

were later applied by the Board of Stewards using the mandate of collateral estoppel⁸.

6. LACK OF CHRB DIRECTIVES IN SUSPENSION HEARING

Mr. Canani asserts that because the CHRB has not adopted directives to determine the criteria for suspension of a license it cannot suspend Mr. Canani's licenses. Counsel relies on Business and Professions Code section 481 which states:

Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

In support of this proposition counsel for Appellant relies on a trial court ruling in the Superior Court Case, Donald Lockwood v. CHRB, LASC # BS147701, in which the Court issued a Writ of Mandate overturning the CHRB's denial of Mr. Lockwood's application to be relicensed as a van driver, because the CHRB had not established criteria to evaluate Mr. Lockwood's rehabilitation.

There are several factors which distinguish the Lockwood case from this case. First there was no appeal from the Lockwood case so the findings in that case are not precedent. Appellant did not cite any additional precedent.

Next the issue of Mr. Lockwood's rehabilitation from the conviction of a crime for purposes of re-licensing is far different from suspension of Mr. Canani following a civil judgment against him for fraud, etc., in the sale of his client's

⁸ That Mr. Canani was not represented by counsel at the Board of Stewards hearing or that his arguments were misplaced (the Stewards addressed his various arguments) has no bearing or effect on the Board of Stewards decision because, given that the issues litigated in the Board of Stewards hearing were identical to those determined in the civil case, they were required to follow the conclusions reached by the jury.

horses⁹. Trainers, in addition to their duties in conditioning and racing horses, are involved in the purchase and sale of horses¹⁰. In the Everest Stables case the jury found that Mr. Canani was the agent for Everest and deceived them by misstating facts concerning the horses and his role on the “buyer’s side of the equation.” This is exactly the fraud and deceit which is addressed in Business and Professions Code section 19525¹¹.

In response to instances of unscrupulous horse sales, in which agents were taking and paying kick backs or had financial undisclosed interests in purchases, our legislature passed Business and Professions Code section 19525 to regulate disclosures in horse sales, including those within the jurisdiction of the CHRB. Section 19525 prohibits any person from acting as a “dual agent” (defined as a person representing a purchaser and a seller in an equine sale, purchase or transfer) unless both the purchaser and the seller in writing first consent to the dual agency. Further, the dual agent may not receive compensation in excess of \$500.00 unless the agent discloses in writing to the buyer and the seller the amount the agent is receiving as a commission and both the buyer and seller agree in writing to the compensation for the agent. Moreover, if the buyer or seller asks the agent, whether the agent is a dual agent or a single agent, to provide financial records in the agent’s possession related to the equine sale, the agent is required to produce the records to the principals. This includes any work product created by the agent in his or her evaluation of the horse.

⁹ Business and Professions Code section 482(b) has no application to the facts of this case because Mr. Canani was not convicted of a crime.

¹⁰ CAR Exhibit “4” contains, among other things, the deposition transcript of Antonio Avila, another licensed trainer who was involved in the purchase of one Everest Stables horse.

¹¹ Everest’s Third Amended Complaint (Exhibit “4”) includes a cause of action (#7) against Mr. Canani for violation of Business and Professions Code section 19525.

A trainer is presumed to know the rules. (CHRB Rule 1894). Therefore the Board of Stewards finding violations of Rules 1489(g) and 1902 stem from Mr. Canani orchestrating the sales as a “dual agent” to benefit himself and others at the expense of Everest Stables. These actions are specifically codified in Horse Racing Law at Sections 19525 and Rule 1489(g); both of which he is charged with knowing.

Given that Mr. Canani had notice of his duties in this situation there is no need for the CHRB to have specified a directive because his actions encompasses duties that are already legislatively mandated upon him.

Appellant’s argument that the Lockwood case establishes a precedent to the instant case is misplaced. That case, even if it were legal precedent, which it is not, is distinguishable based on both the facts and the law. Since Appellant violated sections of the Horse Racing Law that specifically addresses the actions that were incumbent on his license, the Board of Stewards did not need a specific directive to determine that they were substantially related to his qualifications, functions, or duties as a trainer.

7. CONCLUSION

Appellant has the burden to prove facts necessary to sustain the appeal. (CHRB Rule 1764). The hearing is de novo in scope, but it is limited to the record created at the stewards’ level.

A Board of Stewards’ decision may be overruled if a preponderance of the evidence indicates one of the following:

1. The Stewards mistakenly interpreted the law;
2. New evidence of a convincing nature is produced; and

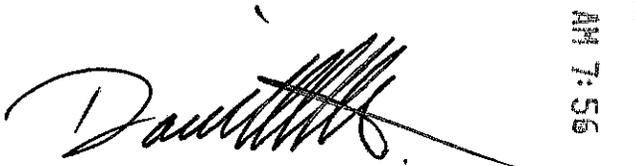
3. The best interests of racing and the State may be better served. (Business and Professions Code section 19517(a).)

The Board of Stewards application of the doctrine of collateral estoppel was mandatory in this case and is consistent with other licensing boards who have relied on a prior judgment in a civil case. See Richards v. Gordon (1967) 254 Cal. App. 2d 735, 738; Contractors' State License Board v. Superior Court (1960) 187 Cal. App.2d 557, 562; In the Matter of Applicant A for Admission [Applicant A Case] (1995) 3 Cal. State Bar Ct. Rtr. 318, 1995 WL 322593. Accordingly, the Board of Stewards properly relied on the jury findings in the underlying civil case and applied collateral estoppel to reach its conclusions in the administrative hearing.

Even though the CHRB had not developed criteria to aid it when considering the suspension of Mr. Canani's license, because the acts that were established against Mr. Canani in the civil case were the specific subject matter of laws binding on Mr. Canani pursuant to his CHRB license, they were necessarily related to the qualifications, functions, or duties of his business or profession. As such Mr. Canani had notice of the specific conduct which regulated him and which he was found to have violated.

Mr. Canani has not proven by a preponderance of evidence that the Board of Stewards "mistakenly interpreted the law" or otherwise committed error and therefore his appeal of the Board of Stewards' Ruling is denied.

Respectfully Submitted,



DANIEL Q. SCHIFFER, ESQ.
CHRB Hearing Officer

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