

**BEFORE THE HORSE RACING BOARD**

**STATE OF CALIFORNIA**

In the Matter of the Appeal from the Board  
of Stewards Official Ruling #008, Los  
Alamitos Winter Thoroughbred Meet, dated  
December 3, 2017

Case No. SAC 17-0069

**NICHOLAS CAFARCHIA**  
**CHRB License #089052**  
**Appellant**

**DECISION**

The attached Proposed Decision is hereby rejected by the California Horse Racing Board. The appellant's appeal of SAC 17-0069 is granted and the Board of Steward's Official Ruling #008, Los Alamitos Winter Thoroughbred Meet, dated December 3, 2017 shall be reversed. The order of finish of the eighth race on June 24, 2017, remains unchanged and is official. The purse monies may be distributed in accordance with the order of finish as of June 24, 2017.

This Decision shall become effective on September 4, 2018.

IT IS SO ORDERED ON August 23, 2018.

CALIFORNIA HORSE RACING BOARD  
Chuck Winner, Chairman



Rick Baedeker  
Executive Director

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8 **BEFORE THE CALIFORNIA HORSE RACING BOARD**

9 **STATE OF CALIFORNIA**

10 <b>In the Matter of:</b>	)	Case No.: SAC 17-0069
11 <b>Appeal of the Board of Stewards Official</b>	)	<b>PROPOSED DECISION REGARDING</b>
12 <b>Ruling No. 008, Los Alamitos Winter</b>	)	
13 <b>Thoroughbred Meet, Dated December 3,</b>	)	
14 <b>2017</b>	)	
15 <b>NICHOLAS CAFARCHIA</b>	)	
16 <b>CHRB License No. 089052</b>	)	<b>THE APPEAL OF THE BOARD OF</b>
17 <b>Appellant</b>	)	<b>STEWARDS OFFICIAL RULING NO.</b>
	)	<b>008, LOS ALAMITOS WINTER</b>
	)	<b>THOROUGHBRED MEET, DATED</b>
	)	<b>DECEMBER 3, 2017</b>

16 **I. INTRODUCTION**

17 This matter arises from an appeal of the Board of Stewards' Official Ruling No. 008  
18 disqualifying racehorse, My Italian Babbo ("Babbo" or the "Horse"), from the eighth race run at  
19 Santa Anita Park on June 24, 2017 (the "Appeal").

20 Darrel Vienna, Esq. represented Appellant Nicholas Cafarchia ("Appellant") during the  
21 Appeal. Deputy Attorney General Brad Parr, Esq. represented the California Horse Racing Board  
22 ("Respondent" or the "CHRB") during the Appeal.

23 Pursuant to California Horse Racing Board Rule 1414, Hearing Officer Patrick J. Kane  
24 ("Hearing Officer") presided over the instant Appeal.

25 Having read and considered the papers presented by the parties, the Officer found this  
26 Appeal appropriate for disposition without holding a hearing.

27 **II. EXHIBITS ADMITTED INTO EVIDENCE**

28 **A. Exhibits Entered into Evidence.**

1 The following exhibits were entered into evidence:

- 2 Exhibit "1" Order Granting Stay Issued by CHRB Executive Director Rick Baedeker  
3 on December 4, 2017;
- 4 Exhibit "2" Letter from Darrel Vienna to CHRB Chairman, the Honorable Charles  
5 Winner, Appealing Official Ruling No. 008 and Requesting a Stay, Dated  
6 December 4, 2017;
- 7 Exhibit "3" The Board of Stewards' Official Ruling No. 008, Los Alamitos Winter  
8 Thoroughbred Meet, Dated December 3, 2017;
- 9 Exhibit "4" The Board of Stewards' Statement of Decision Dated December 3, 2017;
- 10 Exhibit "5" Transcript of Proceedings, CHRB Case No. 17SA194, Dated September 2,  
11 2017;
- 12 Exhibit "6" CHRB Exhibits Admitted into Evidence During the September 2, 2017  
13 Proceedings Concerning Case No. 17SA194;
- 14 Exhibit "7" Appellant's Exhibits Admitted into Evidence During the September 2,  
15 2017 Proceedings Concerning Case No. 17SA194;
- 16 Exhibit "8" The June 4, 2018 Order Setting the Instant Appeal's Briefing  
17 Schedule;
- 18 Exhibit "9" Appellant's Opening Brief Dated June 11, 2018;
- 19 Exhibit "10" Respondent's Brief Dated June 28, 2018; and
- 20 Exhibit "11" Appellant's Reply Brief Dated July 10, 2018.

21 **II. FACTUAL FINDINGS**

22 After analyzing the record below and the parties' respective briefs, this Hearing Officer  
23 makes the following factual findings:

24 **A. Bliss Canyon Stables Files a Financial Complaint Against Appellant.**

25 **I.**

26 On June 9, 2017, Bliss Canyon Stables ("Bliss") filed a complaint against Appellant  
27 alleging a violation of Cal. Code Regs. Tit. 4 § 1876 arising from Appellant's failure to remit  
28 payment in the amount \$3,442.00 to Bliss for services performed (the "Financial Complaint").

1 (Administrative Record (“AR”) at p. 66, 72.) Appellant knew that there were outstanding invoices  
2 owed to Bliss, all of which were about “four, five, [or] six months” old. (AR at p. 44.)

3 On June 9, 2017, and pursuant to Cal. Code Regs. Tit. 4 § 1413, the Stewards properly  
4 gave Appellant notice to appear on June 22, 2017 at 10:00 a.m. concerning Bliss’ Financial  
5 Complaint (the “Financial Complaint Hearing”). (AR at p. 8, 66, 35.)

6 **B. Appellant Enters Two Horses to Run on June 24, 2017.**

7 **II.**

8 On June 21, 2017, Appellant entered Babbo in a one-mile turf allowance optional claiming  
9 race carded as the eighth (8) race at Santa Anita Park on June 24, 2017 (the “Subject Race”). (AR  
10 at p. 40, 67.) Appellant separately entered horse, Radio Chatter (“Radio Chatter”), in a six-furlong  
11 maiden special weight race carded as the ninth (9) race at Santa Anita Park on June 24, 2017.  
12 (AR at p. 40, 89.) At the time he entered Babbo and Radio Chatter in races to be run on June 24,  
13 2017, Appellant’s license was in good standing. (AR at p. 26.)

14 **C. Appellant Fails to Appear at the Financial Complaint Hearing.**

15 **III.**

16 On June 22, 2017, Appellant failed to appear at the Financial Complaint Hearing despite  
17 being given proper notice. (AR at p. 26.) Thus, on June 23, 2017, the Stewards issued Ruling  
18 LATS No. 206 suspending Appellant’s license (the “Suspension Ruling”). (AR at p. 82.)  
19 Specifically, the Suspension Ruling found that:

20 [Appellant] having failed to respond to a complaint alleging violation of California  
21 Horse Racing Board rule #1876 (Financial Responsibility), is suspended for  
violation of California Horse Racing Board rule #1547 (Failure to Appear).

22 During the term of suspension, all licenses and license privileges [of Appellant] are  
23 suspended and pursuant to California Horse Racing Board rule #1528 (Jurisdiction  
24 of Stewards to Suspend and Fine), [Appellant] is denied access to all premises in  
this jurisdiction. (AR at p. 82.)

25 The Stewards did not rule on the merits of the Financial Complaint. (AR at p. 9.)

26 **D. Babbo and Radio Chatter Run at Santa Anita on June 24, 2017.**

27 **IV.**

28 On June 24, 2017, and despite the fact Appellant was suspended, Babbo ran and won the

1 Subject Race earning \$43,680.00 for Appellant. (AR at p. 87.) Appellant was unaware that his  
2 license was suspended when Babbo won the Subject Race. (Id. at p. 40.) The Stewards did not  
3 know that Appellant owned Babbo until after the Subject Race. (Id. at p. 11-12.)

4 **V.**

5 On June 24, 2017, between Santa Anita's eighth and ninth races, Appellant learned his  
6 owner's license had been suspended on June 23, 2017. (AR at p. 40.) Appellant immediately  
7 contacted the Stewards who informed Appellant that he should appear before them on June 25,  
8 2017. (AR at p. 27, 42.)

9 Immediately following Babbo's win in the Subject Race, Radio Chatter, also owned by  
10 Appellant, ran in the ninth race at Santa Anita. (AR at p. 11.) Despite knowing that Appellant's  
11 license was suspended, and despite knowing that Appellant owned Radio Chatter, the Stewards  
12 allowed Radio Chatter to run in Santa Anita's ninth race. (Id. at p. 12.) Radio Chatter finished  
13 second to last in the nine-horse field. (Id. at 89.)

14 **E. Appellant Appears before the Stewards on June 25, 2017.**

15 **VI.**

16 On June 25, 2017, Appellant appeared before the Stewards to discuss the Financial  
17 Complaint and the subsequent license suspension. (AR at p. 42.) Specifically, Appellant resolved  
18 the Financial Complaint by paying \$3,442.00 to Bliss. (Id.) Accordingly, the Stewards issued  
19 Ruling LATS No. 212 (the "Good Standing Order") ordering that:

20 [Appellant], having complied with the provisions of California Horse Racing Board  
21 rule #1876 (Financial Responsibility – \$3,442.00 to Bliss Canyon Stable) is  
22 restored to good standing. Ruling LATS #206 issued at Santa Anita Park  
Winter/Spring Meet on June 23, 2017, is set aside. (AR at p. 9.)

23 **F. The Second and Third Place Finishers in the Subject Race Protest the Results.**

24 **VII.**

25 On June 30, 2017, the owners of the Subject Race's second place finisher, Record Highs,  
26 and third place finisher, Crown the Kitten (collectively, the "Owners"), timely filed protests  
27 alleging that Babbo was ineligible to run in the Subject Race. (AR at p. 9, 69-70.) Thus, the  
28 Owners requested the Stewards: (1) disqualify Babbo from the Subject Race; and (2) redistribute

1 the Subject Race's \$56,000.00 purse. (AR at p. 9, 69-70, 87.)

2 **C. The CHRB Files a Complaint as to whether the Subject Race's Purse should be**  
3 **Redistributed.**

4 **VIII.**

5 On July 4, 2017, the CHRB filed a formal complaint alleging that:

6 ON JUNE 24TH, 2017 THE HORSE "MY ITALIAN BABBO" TRAINED BY  
7 RICHARD BALTAS AND OWNED BY NICHOLAS CAFARCHIA FINISHED  
8 1ST IN THE 8TH RACE AT SANTA ANITA RACE TRACK. IT WAS  
9 DETERMINED THAT THE OWNER NICK CAFARCHIA WAS CURRENTLY  
10 SUSPENDED ON JUNE 23, 2017 FOR FAILURE TO APPEAR ON A  
11 FINANCIAL COMPLAINT (CASE# 17SA153) ON JUNE 22, 2017. THE  
12 RULING (LATS# 206) WAS ISSUED ON JUNE 23, 2017. UNDER CHRB  
13 RULE 1755 (GROUNDS FOR PROTEST) A JOCKEY, DRIVER, TRAINER, OR  
14 OWNER WHICH STARTED IN THE RACE WAS INELIGIBLE TO  
15 PARTICIPATE IN RACING AS PROVIDED IN THIS DIVISION. THE  
16 SECOND PLACE AND THIRD PLACE FINISHERS FILED A PROTEST WITH  
17 THE STEWARDS UNDER CHRB RULE 1754... (AR at p. 61.)

18 The CHRB set a September 2, 2017 hearing date to determine whether Babbo should be  
19 disqualified from the Subject Race and the purse redistributed as Appellant was suspended at the  
20 time Babbo won the Subject Race (the "Eligibility Hearing"). (AR at p. 21.)

21 **IX.**

22 On September 2, 2017, the Eligibility Hearing went forward at the Del Mar Thoroughbred  
23 Club. (AR at p. 17.) The following individuals were present: (1) Stewards, Scott Chaney, Kim  
24 Sawyer, and Grant Baker; (2) Appellant; (3) Appellant's counsel of record, Darrell Vienna; (4);  
25 Babbo's jockey, Corey Nakatani; and (4) Sean McCarthy, the trainer of the Subject Race's third  
26 place finisher. (Id. at p. 17-18)

27 After all presented exhibits and testimony were entered into evidence, the Eligibility  
28 Hearing concluded on September 2, 2017 at 12:15 p.m. (AR at p. 56-57.)

**X.**

On December 3, 2017, the Stewards issued Ruling LATS No. 17SA94 (the "Eligibility  
Ruling"), which: (1) disqualified Babbo from the Subject Race; and (2) redistributed the Subject  
Race's purse in light of Babbo's disqualification. (AR at p.5.) The Ruling was a two to one  
majority decision, with one steward dissenting. (Id. at p. 12-14.)

1 In support of the Ruling, the Stewards issued a Statement of Decision determining  
2 whether:

3 (1) [T]he Stewards gave Appellant proper notice of the Financial Complaint  
4 Hearing; (2) the Stewards are estopped from redistributing the Subject Race's  
5 purse; (3) Appellant's license suspension was set aside in its entirety; and (4) the  
6 Stewards, in their discretion, should disqualify Babbo and redistribute the Subject  
7 Race's purse. (AR at p. 11-13.)

8 The Stewards unanimously found that Appellant was given proper notice of the Financial  
9 Complaint Hearing. (AR at p. 11.) Specifically, the Stewards determined "that there was no  
10 evidence that the CHRB...improperly served the notice to appear for this [Financial Complaint  
11 Hearing]." (Id. at p. 11.)

12 Regarding whether the Stewards were estopped from redistributing the Subject Race's  
13 purse, the Stewards unanimously found that Appellant could not meet the elements for estoppel  
14 to apply in this case. (AR at p.11-12.)

15 Next, concerning the effect of "setting aside" Appellant's license suspension, the majority  
16 of the Stewards held that setting aside Appellant's license suspension did not cancel, annul, void  
17 the suspension. (AR at p. 12.) Specifically, the Stewards determined that Appellant was  
18 suspended at the time Babbo won the Subject Race, and thus the Horse was "ineligible to  
19 participate" in the Subject Race. (Id.)

20 Steward C. Scott Chaney ("Steward Chaney") dissented arguing that "the very specific  
21 language of 'set aside' in the [Good Standing Order] voids the original suspension and  
22 therefore...renders it as if it never existed." (AR at p. 12.)

23 Finally, concerning the Stewards' discretion in this matter, the majority held that allowing  
24 Babbo's win to stand "would undermine the credibility of the [CHRB's] licensing procedures"  
25 and would create a "poor precedent for future similar situations." (AR at p. 13.)

26 Steward Chaney again dissented believing the Stewards should exercise discretion and  
27 not disqualify Babbo because "equity and fairness point to allowing the race to remain unaltered."  
28 (AR at p. 13.) Specifically, Steward Chaney believes the Subject Race's original order of finish  
should stand because:

1 (1) Appellant was not aware of the Financial Complaint Hearing, and upon learning  
2 of his suspension, immediately settled the underlying Financial Complaint; (2)  
3 Babbo did not gain any unfair advantage as the Horse won the Subject Race and  
4 “rewarding the horses that were unable to win the race constitutes unjust  
5 enrichment”; and (3) the Stewards, while knowing of Appellant’s license  
6 suspension, allowed Radio Chatter to run in the ninth race at Santa Anita on June  
7 24, 2017 indicating that the “suspension itself was not controlling.” (AR at p. 13-  
8 14.)

6 **G. The Appeal’s Procedural Background.**

7 **XI.**

8 On December 4, 2017, the CHRB granted Appellant’s request for a stay. (AR at p. 2.)

9 **XII.**

10 On June 1, 2018, this Officer held a telephonic scheduling conference with counsel for  
11 Appellant and counsel for the CHRB. Pursuant to the parties’ agreement, the following  
12 scheduling order was entered:

- 13 • Appellant’s Opening Brief was to be filed no later than June 14, 2018;
- 14 • The CHRB’s Response Brief was to be filed no later than June 28, 2018; and
- 15 • Appellant’s Reply Brief was to be filed no later than July 12, 2018. (Ex. 8.)

16 **XIII.**

17 Because the facts of the Appeal are undisputed, and because the parties adequately briefed  
18 the Appeal’s major issues of law, a hearing was unnecessary.

19 **III. STANDARD OF REVIEW**

20 Business and Professions Code Section 19517(a) provides the overall framework of the  
21 Appeal, and states, in relevant part, that:

22 The board, upon due consideration, may overrule any steward’s decision...if a  
23 preponderance of the evidence indicates any of the following: (1) The steward  
24 mistakenly interpreted the law; (2) new evidence of a convincing nature is  
25 produced: (3) the best interests of racing and the state may be better served.

26 “Preponderance of the evidence means evidence that has more convincing force than that  
27 opposed to it.” (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.) “Preponderance  
28 of the evidence means what it says, viz., that the evidence on one side outweighs, preponderates  
over, is more than, the evidence on the other side, *not necessarily in number of witnesses or*



1 *quantity*, but in its effect on those to whom it is addressed.” (*Glage v. Hawes Firearms Co.* (1990)  
2 226 Cal.App.3d 314, 325 [citations omitted].)

3 Appellant has the burden of proving facts necessary to sustain the appeal. (See, Cal. Code  
4 Regs. Tit. 4 § 1764 [“The burden shall be on the appellant to prove the facts necessary to sustain  
5 the appeal.”].)

6 The parties agree that the Appeal’s underlying facts are not in dispute and the major issue  
7 is whether the Stewards correctly applied horseracing law. Because this Appeal concerns whether  
8 the Stewards mistakenly interpreted the law and whether the ruling at issue “serves the best  
9 interests of racing and the state,” this Officer applies the preponderance of the evidence standard  
10 of review.

## 11 VI. ANALYSIS

### 12 A. Appellant’s License was Suspended at the Time Babbo Won the Subject Race.

13 This Appeal’s threshold issue is whether the Good Standing Order canceled, voided,  
14 and/or annulled Appellant’s license suspension. Specifically, Appellant contends the Stewards  
15 misinterpreted the law by failing to “understand the retroactive nature of a set aside.” (Ex. 9 at p.  
16 6.) However, Appellant’s position is unsupported by fact and law.

17 “To vacate or set aside an order is to determine that it was improperly or illegally issued  
18 and results in the destruction of the order in its entirety.” (*Estate of Hoffman* (1963) 213 Cal.  
19 App. 2d 635, 640.)

20 Here, Appellant argues the Good Standing Order annulled Appellant’s suspension as if it  
21 “never existed.” (Ex. 9 at p. 6.) However, indisputable evidence demonstrates the Stewards did  
22 not declare Appellant’s suspension void from the time of its issuance meaning Appellant’s  
23 contention otherwise is incorrect.

24 Indeed, a reading of the Good Standing Order declares that Appellant’s license was  
25 “restored to good standing” on June 25, 2017 due to Appellant resolving the Financial Complaint.  
26 (AR at p. 42.) And, the Good Standing Order acknowledges the validity of Suspension Order as  
27 it states that Appellant’s license is restored to good standing due to Appellant remitting payment  
28 to Bliss. (Ex. 11 at Ex. 1.)

1           Moreover, the Stewards explained the Good Standing Order did not void Appellant's  
2 suspension, but rather merely restored Appellant's license "to good standing after being  
3 suspended." (AR at p. 12.) The Stewards' explanation cannot be understated because the  
4 Stewards drafted the Good Standing Order, and thus are in the best position to explain its purpose.  
5 (Id.) Indeed, the Stewards' explanation is further supported by the "Case Inquiry" and  
6 "Licensee/Rulings Inquiry" printouts. (AR at p. 72-73.)

7           For this reason, Appellant's "set aside" is unpersuasive.

8           And, Appellant separately failed to provide any evidence demonstrating that the  
9 Suspension Order was illegally or improperly issued, as required. (See e.g., *Estate of Hoffman*  
10 (1963) 213 Cal. App. 2d 635, 640.) In fact, it is undisputed the Stewards properly issued the  
11 Suspension Order as Appellant: (1) admits he failed to appear at the Financial Complaint Hearing;  
12 and (2) resolved the Financial Complaint without disputing the amount allegedly owed to Bliss.  
13 (AR at p. 26, 42.) Appellant's argument fails for this reason as well.

14           Because the Stewards correctly determined the Suspension Order was not void from  
15 inception, and because the Stewards correctly determined that Appellant was suspended at the  
16 time Babbo won the Subject Race, Appellant is not entitled to any purse money Babbo earned in  
17 winning the Subject Race. (See, Cal. Code Regs. Tit. 4 §§ 1755(c), 1481(b)(1) ["No person  
18 required to be licensed shall participate or attempt to participate in a race meeting without holding  
19 a valid license authorizing that participation...Horse Owner."].)

20           Accordingly, the Stewards did not commit a mistake of law in determining that: (1) the  
21 Good Standing Order did not annul and/or void the Suspension Order; and (2) Appellant was  
22 suspended at the time Babbo won the Subject Race.

23 **B. Appellant Fails to Present Evidence Supporting the Application of Estoppel.**

24           Appellant next argues the Stewards are estopped from redistributing the Subject Race's  
25 purse because the Stewards allowed Babbo to run despite Appellant's license suspension. (Ex. 9  
26 at p. 6.) Appellant's argument is unpersuasive as he cannot meet the burden of proof necessary  
27 to apply the estoppel doctrine in this instance.

28           Four elements must be present in order to apply the doctrine of equitable estoppel:

1 (1) [T]he party to be estopped must be apprised of the facts; (2) he must intend  
2 that his conduct shall be acted upon, or must so act that the party asserting the  
3 estoppel had a right to believe it was so intended; (3) the other party must be  
4 ignorant of the true state of facts; and (4) he must rely upon the conduct to his  
injury. (*Feduniak v. California Coastal Com.*, (2007) 148 Cal. App. 4th 1346,  
1359, [citations omitted].)

5 “The government is not immune from the doctrine, and it may be applied where justice  
6 and right require it.” (*Feduniak*, supra, 148 Cal. App. 4th at 1359 [citations omitted].) “However,  
7 it must not be applied if doing so ‘would effectively nullify a strong rule of policy, adopted for  
8 the benefit of the public...’ (Id.)

9 It is well settled that when one of the requisite elements for estoppel is missing, it does  
10 not apply. (See e.g., *In re Marriage of Brinkman* (2003) 111 Cal.App.4th 1281, 1289, *Green v.*  
11 *Travelers Indemnity Co.* (1986) 185 Cal.App.3d 544, 556.)

12 Regarding estoppel’s actual knowledge element, “knowledge of the pertinent facts may  
13 be imputed where the circumstances show that one ought to have known them, and this is  
14 especially so when the party to be estopped was negligent or made affirmative representations  
15 related to those facts.” (*Feduniak*, supra, 148 Cal.App.4th at 1361.)

16 Here, the Stewards did not have actual knowledge that Appellant was Babbo’s owner of  
17 record at the time the Horse ran in the Subject Race. (AR at p. 12.) Nor can actual knowledge of  
18 the license suspension be imputed to the Stewards in this case. Specifically, Appellant argues the  
19 Stewards should have known that Babbo was ineligible to run in the Subject Race as the Stewards  
20 have a statutory duty to oversee the race entry and declaration process. (See Cal. Code Regs. Tit.  
21 4 § 1580 [“All entries and declarations are under the supervision of the stewards, and they may,  
22 without notice, refuse the entries of any person or the transfer of any entries, and they may also,  
23 in their discretion, limit entries by providing that no horse shall be listed for more than one race  
24 in any one day.”].)

25 However, it is indisputable that on June 21, 2017, the date when Appellant entered Babbo  
26 in the Subject Race, Appellant’s license was good standing meaning the Stewards, in overseeing  
27 the entries for June 24, 2017, correctly allowed Appellant to enter Babbo in the Subject Race.  
28 (AR at p. 27.)

1 As to Appellant's argument that the duty imposed on the Stewards via Cal. Code Regs.  
2 Tit. 4 § 1580 extends through the day races are run, it is factually and legally unsupported. Indeed,  
3 Appellant fails to provide any support for this bare-bone conclusion, and thus it must fail. In fact,  
4 Cal. Code Regs. Tit. 4 § 1592 actually provides the Stewards the authority to disqualify any  
5 ineligible horse from a race in situations such as the one presented in the instant Appeal.

6 Because Babbo was eligible for the Subject Race the day entries were taken, and because  
7 the Stewards did not know Appellant was Babbo's owner of record at the time the Horse ran in  
8 the Subject Race, Appellant fails to meet estoppel's first requirement.

9 Concerning estoppel's second element, "it is enough if the party has been induced to  
10 refrain from using such means or taking such action as lay in his power, by which he might have  
11 retrieved his position and saved himself from loss." (*San Francisco BART Dist. v. General*  
12 *Reinsurance Corp.* (N.D. Cal. 2015) 111 F.Supp.3d 1055, 1072, applying California law.)

13 Here, the Stewards were unaware Appellant owned Babbo when the Horse ran in the  
14 Subject Race, and thus Appellant had no reason to believe the Stewards were allowing Babbo to  
15 run despite his license suspension. Indeed, upon learning that Appellant owned Babbo, the  
16 Stewards: (1) "put a hold" on the Subject Race's purse; (2) contacted Appellant concerning his  
17 license suspension; and (3) ordered Appellant to appear the very next morning. (AR at p. 27, 84.)

18 Because the Stewards did not know that Appellant owned Babbo when the Horse ran, the  
19 Stewards did not intend that Appellant would act on their conduct. Thus, Appellant cannot meet  
20 the second required element of estoppel.

21 Regarding estoppel's third element, "the party claiming an estoppel must also prove it did  
22 not have actual knowledge of the true facts and did not have notice of facts sufficient to put a  
23 reasonably prudent man upon inquiry, the pursuit of which would have led to actual knowledge."  
24 (*City of Pleasanton v. Board of Administration* (2012) 211 Cal. App. 4th 522, 544, citations  
25 omitted.)

26 Here, Appellant falls short of demonstrating that he did not have notice of the Financial  
27 Complaint Hearing that ultimately led to Appellant's license suspension. Specifically, the  
28 evidence unequivocally shows that: (1) the CHRB provided Appellant with proper notice of the

1 Financial Complaint Hearing on June 9, 2017; (2) Appellant failed to appear at the Financial  
2 Complaint Hearing; and (3) Appellant located the Financial Complaint Hearing's notice in his  
3 mail after June 25, 2017. (AR at p. 11, 38.)

4 Nor does Appellant's unique "mail sorting system" give Appellant the right to claim he  
5 was "ignorant of the true facts" giving rise to the possibility that he would be suspended if he  
6 failed to appear at the Financial Complaint Hearing. (AR at p. 32-34.) Indeed, the CHRB  
7 properly noticed the Financial Complaint Hearing and the fact that said notice was incorrectly  
8 placed in Appellant's "junk mailbox" does not provide Appellant with permission to claim  
9 ignorance. (See e.g., *San Francisco BART Dist. v. General Reinsurance Corp.* (N.D. Cal. 2015)  
10 111 F.Supp.3d 1055, 1072, applying California law.)

11 Finally, this Hearing Officer takes issue with Appellant's argument that knowledge of  
12 Appellant's suspension should be imputed to the Stewards, but knowledge of the Financial  
13 Complaint Hearing cannot be imputed to Appellant despite receiving proper notice weeks before  
14 said hearing. Appellant cannot have it "both ways" in an attempt to demonstrate that estoppel  
15 somehow applies to this Appeal.

16 Thus, this Hearing Officer finds that Appellant had notice of the facts giving rise to the  
17 possibility that Appellant could be suspended. Accordingly, this Officer finds Appellant cannot  
18 satisfy estoppel's third element.

19 Lastly, the equitable estoppel doctrine does not apply against a government agency if  
20 doing so nullifies a strong public policy. (See e.g., *City of Long Beach v. Mansell* (1970) 3 Cal.3d  
21 462, 496-97.) This Officer finds public policy would be nullified and/or detrimentally affected if  
22 the doctrine of equitable estoppel is applied to the facts of this Appeal for several reasons.

23 Because Babbo's participation in the Subject Race is a clear violation of Cal. Code Regs.  
24 Tit. 4 § 1481, Appellant is barred from attempting to invoke the powers of estoppel. (See e.g.,  
25 *County of Lassen v. State of California* (1992) 4 Cal.App.4th 1151, 1156 ["[T]he equitable  
26 doctrine of estoppel may not be invoked where to do so would violate statutes or constitutional  
27 provisions that define the powers of a public agency."].)

1 And, the individuals most strongly impacted by Babbo's participation in the Subject Race  
2 protested the results and filed requests for the Stewards to: (1) disqualify Babbo from the Subject  
3 Race; and (2) redistribute the Subject Race's \$56,000.00. (AR at p. 9, 69-70, 87.)

4 Consequently, the doctrine of estoppel does not apply to this Appeal meaning the Stewards  
5 did not commit a mistake of law.

6 **C. The Stewards Properly Exercised their Discretion in Disqualifying Babbo.**

7 Lastly, Appellant argues the Stewards' majority decision disqualifying Babbo should be  
8 overturned as: (1) Appellant did not receive actual notice of the Financial Complaint Hearing due  
9 to his "unique mail system"; and (2) "equity and fairness point to allowing" the Subject Race's  
10 original order of finish to stand. (Ex. 9 at p. 7.) Appellant's arguments are unpersuasive.

11 Concerning Appellant's argument that he did not receive actual notice of the Financial  
12 Complaint Hearing, it fails for the reasons discussed above. Specifically, evidence  
13 unquestionably demonstrates that Appellant received notice of the Financial Complaint Hearing  
14 in accordance with Cal. Code Regs. Tit. 4 § 1413. (See Cal. Code Regs. Tit. 4 § 1413 ["Whenever  
15 notice is required to be given by the Board or the stewards, such notice shall be given in writing  
16 either by personal delivery to the person to be notified or by mailing such notice addressed to  
17 such person at his address as on file with the Board."].)

18 Because the CHRB gave notice of the Financial Complaint Hearing in accordance with  
19 applicable law, Appellant's argument otherwise is meritless.

20 Concerning Appellant's equity and fairness claim, this Hearing Officer finds it  
21 unpersuasive. Appellant's Babbo ran in the Subject Race while his license was suspended in  
22 violation of Cal. Code Regs. Tit. 4 § 1481. The majority of the Stewards correctly found that: (1)  
23 they have duty to enforce the CHRB's licensing laws; and (2) the best interests of racing required  
24 enforcing the CHRB's licensing laws in this situation. (AR at p. 13.)

25 Nor are the Subject Race's participants unjustly enriched if Babbo is disqualified from the  
26 Subject Race. Again, Appellant's license was suspended at the time Babbo ran in the Subject  
27 Race meaning the Horse should not have been able to run in and win the Subject Race. Assuming,  
28 Babbo did not run in the Subject Race, the other participants would have finished one position

1 better earning a larger portion of the Subject Race's purse. It cannot be understated that the other  
2 participants in the Subject Race, who complied with CHRB licensing requirements, filed protests  
3 contending that Babbo was "an ineligible runner" who won the Subject Race. (AR at p. 70-71.)

4 Thus, Appellant's unjust enrichment argument lacks merit.

5 Finally, this Hearing Officer notes the Stewards have wide discretion in disqualifying  
6 Babbo from the Subject Race. "Discretion is abused only when the court exceeds the bounds of  
7 reason, all circumstances being considered." (*People v. Fuiava* (2012) 53 Cal.4th 622, 650.)  
8 Indeed, Appellant fails to present any evidence or argument demonstrating the Stewards'  
9 disqualification of Babbo "exceeded all bounds of reason."

10 Appellant's argument fails for this reason also.

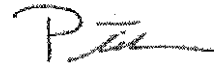
11 Consequently, they did not abuse their discretion in disqualifying Babbo meaning the  
12 Stewards did not commit a mistake of law.

### 13 VIII. CONCLUSION

14 Because the majority of the Stewards correctly interpreted the law, Appellant failed to  
15 meet his burden of proof necessary to grant his Appeal, and thus this Appeal should be denied.

16 WHEREFORE, it hereby recommended that Appellant's Appeal of SAC 17-0069 be  
17 denied, and that the Subject Race's purse money be distributed to in accordance with the Board  
18 of Stewards' Official Ruling LWTL No. 008 dated December 3, 2017.

19 Dated: August 3, 2018



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