

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Appeal of the Board of
Stewards Official Ruling #008, Del Mar
Thoroughbred Club, dated July 24, 2013:

Case No. SAC 13-0030

AGAPITO DELGADILLO
CHRB License #211497

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 is hereby remanded to the Board of Stewards to issue a ruling and order imposing a three (3) day riding suspension.

IT IS SO ORDERED ON October 24, 2013

CALIFORNIA HORSE RACING BOARD
David Israel, Chairman


Jacqueline Wagner
Assistant Executive Director

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:
Appeal of the Board of Stewards Official
Ruling #008, Del Mar Thoroughbred Club,
Dated July 24, 2013

Case No. SAC 13-0030

AGAPITO DELGADILLO
CHRB License #211497
Appellant

PROPOSED DECISION

This Appeal was heard by Daniel Q. Schiffer, Esq., Appellate Hearing Officer designated under Rule 1414 by the California Horse Racing Board (CHRB), at Del Mar, California, in the DMTC Executive Offices on August 23, 2013.

Appearances were made by Roger H. Licht, Esq., Licht & Licht, A Professional Corp., Attorneys on behalf of Appellant, Agapito Delgadillo, and by Rick Amieva, Investigator, on behalf of the CHRB.

The Appeal was reported by Michelle E. Derieg, Weinstein Court Reporters. Safety Steward Luis Jauregui ran the films. Also present were Steward Kim Sawyer and Saul Marquez, Jr.

Sworn testimony was provided by the Appellant, and jockey David Flores for Appellant and by Scott Chaney, Steward for the CHRB.

Appellant submitted an Equibase Chart of the race in question and that exhibit was received into evidence. A tape of the race in question was also viewed during the course of proceedings.

PROCEDURAL BACKGROUND

On July 24, 2013, Appellant, through his attorney filed a Notice of Appeal via fax to the CHRB Sacramento Offices.

Concurrently with filing his appeal Appellant requested that the CHRB stay Appellant's suspension but that request was not acted upon by the CHRB. Appellate sought a Stay or Temporary Restraining Order from the Superior Court for the State of California, County of San Diego and said Stay was granted on July 26, 2013, by the San Diego County Superior Court, the Honorable Jacqueline M. Stern, Judge Presiding.

The CHRB made an oral motion to dismiss the Appeal on grounds that the Appeal cited Business and Professions Code, sec. 19440 as authority to overturn the Stewards' decision; which it was argued was an erroneous basis for the Appeal. Review of the record however showed that the code section was cited as authority for Appellant's Ex Parte Request for a Stay heard by the San Diego County Superior Court but was not cited in the Notice of Appeal filed with the CHRB. Therefore, even though an erroneous cite may have been grounds for denial of the Stay by the Superior Court, the error did not invalidate the Notice of Appeal and the CHRB's Motion was denied.

Further the parties on the record waived the hearing time specified in Rule 1493 requiring ten (10) days notice of the hearing date of the Appeal.

The appeal was submitted for decision on August 23, 2013.

UNDERLYING RULING

Appellant rode the horse named "Cosmic Heat" to win the Ninth (9) race at the Del Mar Race Track on July 21, 2013. The race was a \$16,000 claiming race for three year olds and up (NW2 L) going six (6) furlongs on the all weather track. Following a claim of foul by jockey Edwin Maldonado the Stewards disqualified Cosmic Heat from first to third; behind the horse ridden

by Mr. Maldonado, "Fighting On." As a result of this disqualification the second place horse, "Centenario de Oro" was placed first and Fighting On was places second. There is no appeal of this altered placing.

Appellant appeared before before the Stewards the following day and, after reviewing the videotape of the race with them, the Stewards issued the following ruling:

"Jockey Agapito Delgadillo is suspended for THREE (3) DAYS (July 28,31 and August 1, 2013) for failure to make the proper effort to maintain a straight course in the stretch and causing interference which resulted in the disqualification of his mount "Cosmic Heat" in the ninth race at Del Mar Thoroughbred Club on July 21, 2013. This constitutes a violation of CHRB rule 1699 (Riding Rules-careless riding).

The term of this suspension shall not prohibit participation in designated races pursuant to CHRB rule 1766 (Designated Races)."

Dated July 26, 2013 and signed by Stewards C. Scott Chaney, Tom Ward & Kim Sawyer.

THE EVIDENCE

1. The Film of the Race was viewed primarily from the head on as the horses are coming down the stretch. In deep stretch Cosmic Heat is beside and moving slightly better than Centenario de Oro to his inside. Fighting On is positioned behind this pair but does not have a path to go between these two. He has a horse to his outside. Cosmic Heat drifts out approximately one-two paths under the left hand whip of Delgadillo and then, in a matter of two- three strides, is guided back to his original path by Delgadillo using the reins in his right hand. The head on shows Cosmic Heat's head turned slightly inward as he moves back inside. When Cosmic Heat shifted outward, Fighting On attempted to go into the opening, but took up as the path is closed when Cosmic Heat moved back to his original path. Cosmic Heat prevailed by one length over Centenario de Oro and Fighting On is a head behind the place horse. The parties were unable to identify the distance from the wire where the incident took place but it appeared to be in deep stretch inside the 16th pole.

2. Jockey David Flores (on behalf of Appellant) has been a licensed jockey for 29 years. He has ridden over 25,000 races with some 3508 wins. He testified that Delgadillo rode Cosmic Heat as hard as he could to keep him moving forward and the horse moved in or out very little. Mr. Flores felt that it was hard for the rider behind (on Fighting On) to make a decision and he tried to go in and out several times but the inside horse (Centenario de Oro) did not give him a chance. It was Mr. Flores opinion that Fighting On wasn't enough horse to get through. He felt that Cosmic Heat had problems and, when he got tired, the jockey had to hold him together. He used the reins to control the horse but it is difficult to feel the movement on some horses. He opined that Mr. Maldonado on Fighting On is a very aggressive rider and took chances; including in this instance attempting to go through a hole when he didn't have enough horse to do so. In conclusion Mr. Flores felt the disqualification was justified but the suspension was not warranted. Under cross-examination Mr. Flores agreed that, after Cosmic Heat moved out, then his head turned to the left and he moved in that direction. He described this as "correcting the horse, which had moved out and, since he didn't want to open the pocket, he encouraged the horse to come back in.
3. Jockey Agapito Delgadillo testified on his own behalf. Mr. Delgadillo has been a licensed jockey for 30 years in Mexico and the United States. This is the first time he has appealed a suspension. He returned after the race to find out that jockey Edwin Maldonado (on Fighting On) had claimed a foul against him. He stated that when he hit the horse left handed it went a little bit out even though he was trying to keep the horse going straight. There was nothing more he could have done. He stated under cross examination that he never looked back and that the incident happened very quickly- in a matter of two jumps.
4. Steward C. Scott Chaney testified on behalf of the CHRB. Mr. Chaney has been a Steward for approximately 8 years. Mr. Chaney agreed with the testimony of both Mr. Flores and Mr. Delgadillo. He felt that when Cosmic Heat drifted out there was room for two horses between Cosmic Heat and Centenario de Oro but that gap quickly closed to 1/2 path. He felt that it was Mr. Delgadillo's duty to maintain a straight path unless he

was clear and that his failure to do so placed Fighting On in a dangerous position where he could clip heels. He felt that Mr. Maldonado had enough horse to go through the hole that had opened up by Cosmic Heat drifting out. Mr. Delgadillo should have maintained a straight path or, when his horse drifted out, stayed in his altered path. Under cross examination Mr. Chaney did not feel the fact that the Stewards did not call for an inquiry before Mr. Maldonado lodged a claim of foul was significant. He stated that the timing of the Steward's post race process dictated that the issue was raised in the manner it was and not because of the Stewards' impression of the incident. He stated that Mr. Delgadillo was part of the best jockey colony in the world and was not subject to strict liability but he had a duty not to endanger the other jockeys by his actions and that was what happened in this instance. Accordingly the suspension was justified.

5. The Race Chart. A review of the race chart basically substantiates the testimony of the witnesses. The Footnotes state, "COSMIC HEAT stalked between horses or a bit off the rail, came out leaving the turn and four wide into the stretch, rallied gamely under left handed urging, drifted in late, gained the lead approaching the wire and prevailed." "Fighting On pulled between horses then stalked a bit off the rail, went between foes leaving the turn, came out into the stretch, rallied off the fence, tried to go between rivals in late stretch but steadied in tight. The Chart shows that Cosmic Heat finished one length in front of Centenario, who in turn finished a neck in front of Fighting On. The Chart also shows that the purse money was divided to first place: \$14,400; and to third place: \$2,280.

DISCUSSION

For his appeal to be successful the Appellant must show by a preponderance of the evidence that that the Stewards mistakenly interpreted the law, or that there is new evidence of a convincing nature, or that the best interest of racing may be served. B & P C sec. 19517(a).

The Stewards ruled that Jockey Delagadillo allowed his horse to interfere with or cause the other horse to lose stride, ground or position in a part of

the race where the horse lost the opportunity to place where it might reasonably expected to finish. Rule 1699(b).

Appellant has tried to draw a distinction between his horse moving forward and out running his competitor to the wire versus the Stewards characterization of interference after the horse had drifted out. The testimony of the parties, the race tape and the race chart are all consistent. Cosmic Heat drifted out and, in a matter of a few strides, went back in. When he did so, he cut off the path of Fighting On who was running into the hole that had opened when Cosmic Heat drifted out. The result was that Fighting On had to take up and finished third beaten a neck by Centenario de Oro.

While there was no evidence presented that would lead to the conclusion that Fighting On would have won the race still Appellant has not presented any evidence that would lead to the conclusion that Fighting On would not have achieved second place, in front of Centenario de Oro, had he not had to take up. Therefore the disqualification was warranted.

Further if a Jockey rides in a manner contrary to this rule, ...the Jockey may be suspended. Rule 1699(f). Appellant argued that the disqualification from first to third caused Appellant substantial financial hardship. This penalty amounts to \$1,316 in loss of earnings to Mr. Delgadillo (i.e., 10% of \$14,400, i.e., 1,440, less 5% of \$2,280, plus \$10, i.e., \$124, for net \$1,316). (See Rule 1632 for calculation).

Appellant has failed to show that his mount was clear when another horse attempted to pass in a clear opening and Appellant moved over causing the other horse to shorten stride. Rule 1699(a). Mr. Delgadillo by his own testimony did not look back to see where the other horse was. He failed to show that his position was such that he was clear of the other horse and the evidence substantiates the conclusion that he was not. Mr. Delgadillo, even if he did not look back, was aware of the horses around him and must have known that Fighting On was attempting to find a path to run in. Appellant therefore was required to be mindful that he needed to keep a straight path because he was not clear almost to the conclusion of the race. The race chart bears this out when it states that Cosmic Heat "gained the lead late and prevailed."

Therefore there is substantial evidence to support the Stewards' Decision to suspend Mr. Delgadillo for careless riding and to render a suspension beyond a monetary penalty. Mr. Delgadillo's actions definitely placed the safety of another participant at risk. Under such circumstances even a stiff financial penalty, such as Appellant incurred via the disqualification, may in the reasonable opinion of the Stewards be supplemented by the three day suspension ordered. Therefore Appellant has failed to meet his burden of proof to show by a preponderance of the evidence that the Steward's decision should be reversed. Rule 1764.

ORDER

Official Ruling DMTD Ruling #0008, dated July 24, 2013, imposing a three (3) day suspension on Jockey Agapito Delgadillo, Lic., #211497, for failure to make the proper effort to maintain a straight course in the stretch and causing interference under Rule 1699 in the Ninth (9) race at Del Mar Thoroughbred Club Race Track on July 21, 2012, is hereby AFFIRMED.

The Stewards shall specify the days that the suspension will be effective.

Dated: September 9, 2013

A handwritten signature in black ink, appearing to read 'D. Schiffer', is written over a horizontal line.

DANIEL Q. SCHIFFER
Designated Hearing Officer