

**BEFORE THE HORSE RACING BOARD**

**STATE OF CALIFORNIA**

In the Matter of the Appeal from the Board  
of Stewards Official Ruling #011, Del Mar  
Thoroughbred Club, dated August 5, 2018

Case No. SAC 18-0029

**ASSAEL ESPINOZA**  
**CHRB License #327131**  
**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 ten (10) day riding suspension.

IT IS SO ORDERED ON October 25, 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 18-0029	
11 <b>Appeal of the Board of Stewards. Official</b>	)	<b>PROPOSED DECISION RE: APPEAL</b>	
12 <b>Ruling No. 011, Del Mar Thoroughbred</b>	)		<b>OF THE BOARD OF STEWARDS'</b>
13 <b>Club, Dated August 5, 2018</b>	)		<b>OFFICIAL RULING NO. 011, DEL</b>
14 <b>ASSAEL ESPINOZA</b>	)	<b>MAR THOROUGHbred CLUB,</b>	
15 <b>CHRB LICENSE NO. 327131</b>	)	<b>DATED AUGUST 5, 2018</b>	
16 <b>APPELLANT</b>	)	Hearing Date: August 24, 2018	
	)	Time: 10:30 a.m.	

16 **I. INTRODUCTION**

17 This matter arises from an appeal of the Board of Stewards' Official Ruling No. 011, Del  
18 Mar Thoroughbred Club, dated August 5, 2018 (the "Appeal").

19 Appellant, Assael Espinoza ("Appellant") personally appeared and was represented by  
20 Bing Bush, Jr., Esq. The California Horse Racing Board ("Respondent" or the "CHRB") was  
21 present and represented by Michael J. Early, Esq.

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

24 This Appeal came for hearing on August 24, 2018 at 10:30 a.m. at the Del Mar  
25 Thoroughbred Club in Del Mar, California 92014 (the "Hearing"). Michelle Derieg recorded all  
26 testimony presented during the Hearing.

27 This matter's evidentiary record closed at the conclusion of the proceedings on August  
28 31, 2018 at approximately 1:21 p.m.

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**II. EXHIBITS ADMITTED INTO EVIDENCE**

**A. Exhibits Entered into Evidence by the CHR.B.**

The CHR.B entered the following exhibits into evidence:

- Exhibit "1" NOTICE OF HEARING, CASE NO. SAC 18-0029;
- Exhibit "2" SAN DIEGO SUPERIOR COURT STAY (CASE NO. 37-2018-0003961-CU-WM-NC);
- Exhibit "3" ORDER DENYING STAY, DATED AUGUST 7, 2018;
- Exhibit "4" APPEAL AND STAY REQUEST FOR ASSAEL ESPINOZA FROM ATTORNEY BING BUSH, JR;
- Exhibit "5" BOARD OF STEWARDS OFFICIAL RULING #11, DEL MAR THOROUGHBRED CLUB, DATED AUGUST 5, 2018;
- Exhibit "6" BOARD OF STEWARDS MINUTES FOR AUGUST 1, 2018 THROUGH AUGUST 5, 2018;
- Exhibit "7" C.H.R.B. RULES 1699-RIDING RULES, 1766-DESIGNATED RACES;
- Exhibit "8" COPY OF THE RACE PROGRAM AND RESULTS, 10TH RACE, DEL MAR THOROUGHBRED CLUB, DATED AUGUST 4, 2018; AND
- Exhibit "9" DVD DEL MAR RACE #10, AUGUST 4, 2018.

**B. Exhibits Entered into Evidence by Appellant.**

Appellant entered the following exhibits into evidence:

- Exhibit "1" COPY OF RACING FORM; AND
- Exhibit "3" OFFICIAL RULING OF THE BOARD OF STEWARDS, DEL MAR THOROUGHBRED CLUB, DATED AUGUST 20, 2017.

**III. LIST OF TESTIFYING WITNESSES**

**A. Witnesses Testifying on Behalf of Appellant.**

Appellant called the following the witnesses:

- Assael Espinoza; and

- 1           • Brian Beach.

2 **B. Witnesses Testifying on Behalf of the CHRB.**

3           The CHRB called the following the witnesses:

- 4           • The Hon. Kim Sawyer;  
5           • The Hon. Grant Baker; and  
6           • The Hon. John Herbevoux.

7 **IV. FACTUAL FINDINGS**

8           After admitting all exhibits and testimony into evidence, this Officer makes the following  
9 findings of fact:

10 **I.**

11           On August 4, 2018 Appellant rode the number four (4) horse, Aussie Fox (“Aussie Fox”  
12 or the “Horse”), to a third-place finish in the tenth race at the Del Mar Thoroughbred Club (the  
13 “Subject Race”). (Ex. 8.) The Subject Race was a \$62,500.00 maiden claiming race run at one  
14 mile on the turf course. (Id.)

15 **II.**

16           At the top of the Subject Race’s stretch run: (1) Aussie Fox failed to maintain a straight  
17 course, “lugged in,” and crossed in front of the number eight horse (8), “Irish Spring,” causing  
18 Irish Spring to “clip heels” and fall; (2) the number eleven horse (11), Bitter Ring Home, could  
19 not avoid the fallen Irish Spring and fell over the top of that rival; and (3) the riders of Irish Spring  
20 and Bitter Home both went down (the “Conduct”) as a result. (Hearing Transcript (“H.T.”) at p.  
21 28-29; Exs. 8, 9.) Irish Spring died immediately from the injuries he suffered while jockeys Corey  
22 Nakatani and Geovanni Franco were immediately taken to the hospital for the injuries they  
23 suffered resulting from the Conduct. (H.T. at p. 75-77; Ex. 9.) Corey Nakatani, Irish Spring’s  
24 jockey, suffered such serious injuries that he has been unable to ride since the Subject Race. (Id.  
25 at p. 45.)

26 **III.**

27           Immediately after the Subject Race concluded, the Board of Stewards (“Stewards”) posted  
28 an inquiry concerning Aussie Fox’s Conduct. (Ex. 8.) After reviewing the Subject Race, the

1 Stewards unanimously determined that:

2 Following the running of the race the inquiry sign was posted to review an accident  
3 that occurred near the 1/8 pole. Involved were #4 Aussie Fox (A. Espinoza 3rd),  
4 #8 Irish Spring (C. Nakatani DNF) and #11 Bitter Ring (G. Franco DNF). In a  
5 unanimous decision, #4 crossed over in front of #8 without sufficient clearance  
causing #8 to clip heels and fall. #11 fell over the top of #8. #4 was disqualified  
from third position and placed unplaced.

6 ORIGINAL ORDER OF FINISH 9-2-(4)-1-5-12-10-6-3-7  
7 OFFICIAL ORDER OF FINISH 9-2-1-5-12-10-6-3-7. (Ex. 6 at p. 5.)

8 **IV.**

9 On August 5, 2018, Appellant appeared before the Stewards to review film of his ride  
10 during the Subject Race. (Ex. 6 at p. 6.) During film review, Appellant stated Aussie Fox “veered  
11 in” when the Horse saw Appellant’s riding crop. (Id.) The Stewards disagreed unanimously  
12 finding that when Appellant “took his hand off [Aussie Fox’s] rein, the Horse drifted into the path  
of the horse to his inside who clipped heels and fell.” (Id.)

13 Accordingly, on August 5, 2018, the Stewards unanimously issued Official Ruling DMTD  
14 No. 011 (the “Ruling”), which stated the following:

15 Apprentice Jockey ASSAEL ESPINOZA, who rode AUSSIE FOX in the tenth race  
16 at Del Mar Race Track on Saturday, August 4, 2018 is suspended for TEN (10)  
17 racing days (August 12, 15, 16, 17, 18, 19, 22, 23, 24, and August 25, 2018) for  
18 altering course without sufficient clearance and causing interference entering the  
19 stretch resulting in the disqualification of his mount from third to unplaced; a  
violation of California Horse Racing Board rule #1699(c)(e) (Riding Rules -  
Careless Riding). The term of this suspension shall not prohibit participation in  
designated races in California. (Ex. 5).

20 **V.**

21 On August 6, 2018, Appellant timely filed a “Notice of Appeal” with the CHRB and  
22 simultaneously sought a stay of the Ruling’s ten-day suspension. (Ex. 4.) Appellant argued the  
23 Ruling was “erroneous, excessive, and not in accordance with the Horse Racing Law 19517 and  
24 CHRB Rule 1761.” (Id.)

25 **VI.**

26 On August 7, 2018, the CHRB denied Appellant’s request for a stay. (Ex. 3.) As a result,  
27 Appellant subsequently filed an Ex Parte Application in the Superior Court of California for the  
28 County of San Diego seeking a stay of the Ruling. (Ex. 2.) On August 9, 2018, the Court granted

1 Appellant's Ex Parte Application. (Id.)

2 **VII.**

3 On August 13, 2018, the CHRB set this Appeal for hearing on August 24, 2018 at the Del  
4 Mar Thoroughbred Club. (Ex. 1.)

5 **V. ISSUES ON APPEAL AND CONTROLLING LAW**

6 The issue before this Officer is whether Appellant met the required burden of proof to  
7 overrule the Stewards' unanimous decision, that at the top of the Subject Race's stretch, Appellant  
8 altered course without sufficient clearance causing interference, in violation of Cal. Code Regs.  
9 Tit. 4 § 1699 ("Section 1699").

10 Section 1699 states, in pertinent part, that during the running of the race:

11 (a) A horse shall not interfere with any other horse. Interference is defined as  
12 bumping, impeding, forcing or floating in or out or otherwise causing any other  
horse to lose stride, ground, momentum or position.

13 (b) A horse which interferes with another as defined in subsection (a) may be  
14 disqualified and placed behind the horse so interfered with if, in the opinion of the  
Stewards, the horse interfered with was not at fault and due to the interference lost  
15 the opportunity for a better placing.

16 (c) Jockeys shall not ride carelessly, or willfully, so as to permit their mount to  
interfere with any other horse.

17 (d) Jockeys shall not strike or strike at another horse or jockey so as to impede,  
18 interfere with, intimidate, or injure.

19 (e) If a jockey rides in a manner contrary to this rule, the mount may be disqualified  
and the jockey may be suspended or otherwise disciplined by the Stewards.

20 (f) When suspending a jockey for riding contrary to this rule, the Stewards shall  
21 issue a minimum suspension of two riding days, and shall issue a suspension greater  
22 than the minimum for (1) more than one infraction of this rule by the jockey within  
any contiguous 60-day calendar period or (2) any infraction which, in the opinion  
of the stewards, jeopardized the safety of another horse or jockey.

23 Moreover, Business and Professions Code Section 19517(a) ("Section 19517") states, in  
24 relevant part, that:

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

1 Appellant must prove facts necessary to sustain the appeal by a preponderance of the  
2 evidence. (See, Cal. Code Regs. Tit. 4 § 1764 [“The burden shall be on the appellant to prove the  
3 facts necessary to sustain the appeal.”].)

4 Because Appellant contends that the Ruling violates Section 19517, this Officer applies  
5 the preponderance of the evidence standard of review. “Preponderance of the evidence means  
6 evidence that has more convincing force than that opposed to it.” (*Glage v. Hawes Firearms Co.*  
7 (1990) 226 Cal. App. 3d 314, 324.) “Preponderance of the evidence means what it says, viz., that  
8 the evidence on one side outweighs, preponderates over, is more than, the evidence on the other  
9 side, *not necessarily in number of witnesses or quantity*, but in its effect on those to whom it is  
10 addressed.” (Id. at 325 [citations omitted].)

## 11 VI. SUMMARY OF EVIDENCE PRESENTED

### 12 A. Summary of Testimony Presented by Appellant.

13 In support of demonstrating the he did not violate Section 1699, Appellant testified on his  
14 own behalf and called jockey agent, Brian Beach (“Beach”), to testify on his behalf.

15 Appellant is a Southern California based apprentice jockey who has held an apprentice  
16 license since February 2018. (H.T. at p. 9.) Since beginning his career in February, Appellant  
17 has ridden in approximately “300 races.” (H.T. at p. 10.)

18 While conceding Aussie Fox “came in” at the top of the Subject Race’s stretch, Appellant  
19 contends he “corrected [Aussie Fox]” after the Horse saw his riding crop which caused the Horse  
20 to “lug in.” (H.T. at p. 28-29.) Specifically, Appellant testified Aussie Fox was attempting to  
21 “lug out” during the Subject Race’s final turn leading Appellant to pull on the Horse’s left rein in  
22 an attempt to keep the Horse “straight.” (Id. at p. 26-28.)

23 Appellant further testified that he “un-cocked” his riding crop with his right hand hoping  
24 to prevent Aussie Fox from “getting out.” (Id. at p. 28-29.) However, when Aussie Fox saw  
25 Appellant’s riding crop, the Horse “lugged in” forcing Appellant to correct Aussie Fox. (Id. at p.  
26 29.) However, Appellant’s attempt to “straighten out” Aussie Fox came too late to avoid the  
27 Conduct. (Id.)

28 Appellant separately explained Aussie Fox had a history of “lugging out” near the “quarter

1 poll” during morning workouts, which Appellant claims the Horse did during the Subject Race’s  
2 final turn. (H.T. at p. 20.) Appellant further stated that Aussie Fox’s alleged propensity to “lug  
3 out” was “on his mind” during the Subject Race. (Id. at p. 31.)

4 Appellant further testified that: (1) he used his best efforts to ride safely during the Subject  
5 Race; (2) he is “safety minded” and “conscientious” in every race he rides; and (3) he has never  
6 been suspended by the Stewards. (H.T. at p. 30-32.)

7 In further support that no Section 1699 violation occurred, Appellant called Beach to  
8 testify on his behalf. Beach is Appellant’s agent and has been a jockey’s agent for approximately  
9 twenty-seven years (27) in Washington, Florida, New York, Kentucky, and California. (H.T. at  
10 p. 35, 40.) Initially, Beach testified that: (1) the Ruling is the first time he can recall where a  
11 jockey was suspended for ten days (10) for a first unintentional riding infraction; and (2)  
12 Appellant is a very safety-oriented jockey. (H.T. at p. 36, 38.)

13 As to the Subject Race and Conduct, Beach stated he believed Appellant could not have  
14 prevented the Conduct. (H.T. at p. 42.) Beach testified he believed Aussie Fox was trying to “lug  
15 out” during the Subject Race’s far turn and that Appellant attempted to “straighten the Horse up  
16 at the top of the [Subject Race’s] stretch, which is “appropriate conduct.” (Id. at p. 43.) While  
17 reviewing the Subject Race’s reply, Beach opined that: (1) Aussie Fox suddenly “came in” after  
18 seeing Appellant’s riding crop; and (2) there was nothing Appellant could have done to prevent  
19 the Conduct from occurring. (Id. at p. 44.)

20 **B. Summary of Testimony Presented by the CHRB.**

21 In support of its position that Appellant violated Section 1699, the CHRB called Stewards  
22 Grant Baker (“Steward Baker”), John Herbevoux (“Steward Herbevoux”), and Kim Sawyer  
23 (Steward “Sawyer”). Sawyer, Herbevoux, and Baker were the on-duty stewards during the  
24 Subject Race and issued the unanimous Ruling.

25 Regarding Steward Baker, he provided the following testimony:

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1 (1) Aussie Fox was not “lugging out” during the Subject Race’s far turn as  
2 Appellant contends (H.T. at p. 59); (2) Appellant rode carelessly by taking his right  
3 hand off of Aussie Fox’s rein losing half of his control over the Horse at the top of  
4 the Subject Race’s stretch, which was incorrect (Id. at p. 57); (3) when Appellant  
5 took his right hand off of Aussie Fox’s rein, the Horse comes inward creating the  
6 Conduct (Id.); (4) Appellant carelessly lost control of Aussie Fox without sufficient  
7 clearance (Id. at p. 64.); (5) Appellant failed to be aware of “where his rivals were”  
8 (Id. at p. 67) (6) Appellant struck Aussie Fox with his riding crop before the Horse  
9 had “completely leveled off” and was only “partially clear” when he “reached up  
10 to hit his horse” (Id. at p. 75); (7) that Appellant received a ten day suspension due  
11 Appellant’s Conduct resulting in two jockeys going to the hospital and the death of  
12 Irish Spring (Id. at p. 77); and (8) had there not been any catastrophic injuries, it is  
13 possible Appellant would have only received a three day (3) suspension. (Id. at  
14 p.77.)

9 Concerning Steward Herbevoux, he testified that Appellant: (1) improperly allowed  
10 Aussie Fox to “drift in” taking the path of Irish Spring “shortly after straightening away in the  
11 stretch drive” (H.T. at p. 88-89, 93); (2) “left the rail open” for another horse to come through and  
12 proceeded to allow Aussie Fox to “drift inward” (Id. at 89); and (3) should have “reach[ed] up  
13 and grab[bed] the right rein [to] prevent [Aussie Fox] from drifting in and initiating the Conduct.”  
14 (Id. at p. 90).

15 Finally, Steward Sawyer provided the following testimony:

16 (1) She expected Appellant to keep his hands on Aussie Fox’s reins as the Horse  
17 went around the Subject Race’s far turn and “square the Horse up” before using the  
18 riding crop (H.T. at p. 104); (2) Appellant allowed Aussie Fox to drift to the rail  
19 while failing to immediately “straighten-out” Aussie Fox (Id.); (3) Appellant  
20 should have guided Aussie Fox with the “reins” especially in light of the fact that  
21 the Horse allegedly had a “propensity to not run in a straight line” (Id. at p. 105,  
22 108); and (4) after reflecting on the Conduct and Appellant’s defense, she believes  
23 Appellant’s ten-day suspension (10) is proper. (H.T. at p. 105.)

## 21 VII. DISCUSSION

### 22 A. The Unsigned Declaration of Rafael Bejarano is Stricken.

23 Initially, Appellant’s attempt to introduce the unsigned declaration of Rafael Bejarano (the  
24 “Declaration”) into evidence fails. And, to the extent Appellant read any portion of the  
25 Declaration into the record, such testimony is inadmissible, and is stricken from the Appeal’s  
26 record for failing to comply with Cal. Civ. Proc. Code § 2015.5. (See e.g., *People v. Pierce* (1967)  
27 66 Cal. 2d 53, 59.)

### 28 B. A Preponderance of the Evidence Supports the Ruling.

1           Based upon the evidence presented, a preponderance of the evidence supports the  
2 Stewards' unanimous Ruling that Appellant's Conduct violated Section 1699. Appellant failed  
3 to meet the required burden of proof for several reasons.

4           First, the evidence presented reveals that Appellant allowed Aussie Fox to "drift inward"  
5 without being sufficiently clear causing Irish Spring and Bitter Ring Home to fall and injuring the  
6 jockeys of both horses. Upon realizing Aussie Fox drifted inward without sufficient clearance,  
7 Appellant should have taken immediate action to "straighten out" Aussie Fox, which he failed to  
8 do. (H.T. at p. 104-105.)

9           Nor is Appellant's position advanced via his claim that Aussie Fox: (1) has a history of  
10 "lugging out on the turns"; and (2) "lugged out" during the Subject Race's far turn. Rather, the  
11 evidence shows Appellant controlled Aussie Fox throughout the Subject Race while the Subject  
12 Race's replay does not reveal Aussie Fox "getting out" on the far turn. (Ex. 9.) This is especially  
13 true in light of the fact Aussie Fox had other race participants immediately to his outside during  
14 the Subject Race's far turn. (Ex. 9.)

15           Additionally, the fact Appellant knew of Aussie Fox's history of "lugging out on the  
16 turns" works against Appellant. Specifically, if Appellant knew this then he should have been  
17 prepared to take immediate action to "straighten out" Aussie Fox after the Horse drifted inward  
18 without sufficient clearance. Indeed, the fact Appellant was aware of Aussie Fox's tendency to  
19 "lug out" is even more reason why Appellant should have kept both hands on the Horse's reins  
20 and ensure the Horse was "squared up" before using the riding the crop, as noted by the Stewards.  
21 (H.T. at p.104-105, 108.)

22           For this reason also, Appellant's Appeal fails.

23           Finally, as to Appellant's argument that the Ruling's ten-day suspension should be  
24 reduced because: (1) the Conduct was unintentional; and (2) Appellant lacks any previous riding  
25 suspensions, it fails as a matter of law. Specifically, Appellant's argument is belied by the fact  
26 Section 1699 requires the Stewards to issue a greater penalty if the actions of a rider "jeopardize  
27 the safety of another horse or jockey." (See, Cal. Code Regs. Tit. 4 § 1699(f) ["When suspending  
28 a jockey for riding contrary to this rule, the Stewards shall issue a minimum suspension of two

1 riding days, and shall issue a suspension greater than the minimum for...(2) any infraction which,  
2 in the opinion of the stewards, jeopardized the safety of another horse or jockey.”].)

3 Here, Appellant’s conduct resulted in the death of Irish Spring and the hospitalization of  
4 two jockeys. Thus, the law required the Stewards to suspend Appellant for more than the statutory  
5 minimum, which they correctly did. (See, Ex. 5.) Appellant’s lack of previous riding infractions  
6 and the fact the Conduct was unintentional are not factored into determining the length of a  
7 suspension pursuant Section 1699(f). Thus, the Stewards, viewing the Conduct and the  
8 catastrophic injuries it created, acted well within the discretion provided by Section 1699. Thus,  
9 Appellant’s argument fails as a matter of law.

10 Accordingly, the evidence supports the Stewards’ unanimous Ruling that during the  
11 Subject Race, Appellant “altered course without sufficient clearance and causing interference  
12 entering the stretch” in violation of Section 1699.

### 13 VIII. CONCLUSION

14 Because the evidence presented supports the Stewards’ Ruling, and because Appellant did  
15 not meet the requirements of Section 19517, Appellant failed to meet the burden of proof  
16 necessary to sustain his Appeal.

17 WHEREFORE, it hereby recommended that Appellant’s Appeal of SAC 18-0029 be  
18 overruled, and that Appellant’s ten-day suspension (10) for violated Section 1699 be upheld and  
19 reinstated.

20 Dated: October 15, 2018



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