

**BEFORE THE HORSE RACING BOARD**

**STATE OF CALIFORNIA**

In the Matter of the Appeal from the Board  
of Stewards Official Ruling #048, Del Mar  
Thoroughbred Club, dated August 14, 2016

Case No. SAC 16-0038

**STEWART ELLIOTT**  
**CHRB License #300089**  
**Appellant**

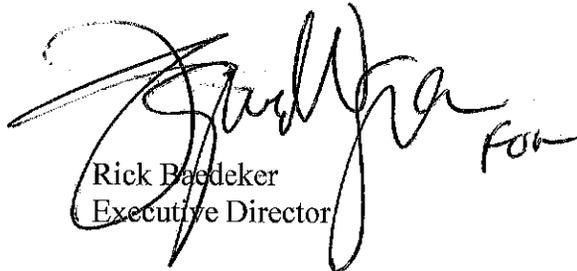
**DECISION**

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 a (3) day riding suspension.

IT IS SO ORDERED ON October 20, 2016.

CALIFORNIA HORSE RACING BOARD  
Chuck Winner, Chairman

  
Rick Baedeker  
Executive Director

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CALIFORNIA HORSE RACING BOARD  
STATE OF CALIFORNIA**

**In the Matter of the Appeal of Stewards  
Official Ruling #048, Del Mar  
Thoroughbred Club dated 8-14-2016**

**Case No. SAC 16-0038**

**STEWART ELLIOTT**

**CHRB License #300089**

**Appellant**

**PROPOSED DECISION**

This appeal was heard by Steffan Imhoff, a Hearing Officer/Appellate Judge designated under Rule 1414 by the California Horse Racing Board (CHRB), at Del Mar Race Track, Del Mar, California, Executive Offices Upstairs Conference Room, on September 3, 2016.

Phil Miyazaki, Senior Supervising Investigator represented CHRB.

Attorney Bing Bush, Del Mar, California, represented the Appellant.

Mr. Elliott testified in his own behalf.

Steward Grant Baker testified for the CHRB.

Steward Kim Sawyer also testified for the CHRB.

Also present was Safety Steward Luis Jauregui.

The proceedings were transcribed by Michelle Derieg, Hearing Reporter, for Weinstein Court Reporters.

## **PROCEDURAL BACKGROUND**

This Appeal concerns Jockey Stewart Elliott's ride during the 3rd race at Del Mar Race Track on August 13, 2016. Elliott rode the #7 horse UNUSUAL TASTE, a 5-year-old gelding, in a \$32,000 claiming race for thoroughbreds 3-year-old and upwards who had not won a race in 2016. The race was run at 1 1/16 miles on the Del Mar Jimmy Durante turf course. According to the official chart UNUSUAL TASTE angled in and chased inside, went outside a rival on the second turn and into the stretch, found the inside again in the drive and finished with interest along the rail. The horse allegedly interfered with was the 5 year old Argentinian gelding Canecoa. He pulled between horses leaving the chute then stalked, steadied when rivals went past into the stretch and also weakened late.

## **JOCKEY FILM REVIEW**

Jockey STEWART ELLIOTT came to the office to review his ride in the third race yesterday. As the field neared the quarter pole, Mr. Elliott found himself with a good chance to win the race, but had a horse to his inside and several in front of him. He made the quick decision to angle toward the inner rail and in the process caused his rival (Canecoa) to steady sharply. In retrospect he wishes he had chosen to angle to the outside but nevertheless thought he protected his fellow riders given the situation. We disagreed, believing that the move was a bit aggressive and careless. We therefore issued the following ruling:

### **DMTD Ruling #048**

Jockey STEWART ELLIOTT, who rode UNUSUAL TASTE in the third race at Del Mar Race Track on August 13, 2016, is suspended for THREE (3) racing days (August 20, 21 and 24, 2016) for altering course without sufficient clearance and causing interference entering the stretch. This constitutes a violation of California Horse Racing Board rule #1699 (Riding Rules – careless riding).

Pursuant to California Horse Racing Board rule #1766 (Designated Races), the term of suspension shall not prohibit participation in designated races in California.

#### **CONTROLLING LAW**

Appellant, through counsel, has filed a timely notice appealing Order SAC16-0038 (Rule 1761).

Appellant, through counsel, has also filed a timely request for a stay of a suspension pending a decision by the CHRB (Rule 1762). A stay was granted by Judge Earl A. Moss III, San Diego Superior Court, on August 17, 2016.

The hearing on appeal of jockey STEWART ELLIOTT was conducted by Hearing Officer/Appellate Judge Steffan Imhoff at the Del Mar Race Track, Executive Offices Upstairs conference room, on September 3, 2016.

The Board presented the testimony of Stewards Grant Baker and Kim Sawyer as well as the investigative file and a DVD of the race. Appellant testified in his own behalf and denied riding carelessly.

This appeal to the CHRB is authorized by Rule 1761. Appellant has the burden of proof on appeal under Rule 1764. The focus of the hearing was whether or not the DVD of the race showed careless riding as defined by Rule 1699.

#### **RULE 1699**

- a. A leading horse is entitled to any part of the course but when another horse is attempting to pass in a clear opening the leading horse shall not cross over so as to compel the passing horse to shorten its stride.

- b. A horse shall not interfere with or cause any other horse to lose stride, ground or position in a part of the race where the horse loses the opportunity to place where it might be reasonably expected to finish.
- c. A horse which interferes with another and thereby causes any other horse to lose stride, ground or position, when such horse is not at fault and when such interference occurs in a part of the race where the horse interfered with loses the opportunity to place where it might, in the opinion of the Stewards, be reasonably expected to finish, may be disqualified and placed behind the horse so interfered with.
- d. Jockeys shall not ride carelessly, or willfully, so as to permit their mount to interfere with or impede any other horse.
- e. Jockeys shall not willfully strike or strike another horse or jockey so as to impede, interfere with, intimidate or injure.
- f. 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.

#### **EVIDENCE**

##### **A. Testimony of Stewart Elliott**

Mr. Elliott is a well-known and successful rider. He has been a jockey for 35 years. It is estimated that he has ridden in approximately 35,000 races and was aboard the winner in almost 5000 of those contests.

As to this race appellant vigorously denies riding carelessly. The action took place between the 1/4 pole and the 1/8 pole. Elliott's stead, number seven, was traveling in lane #2 turning into the stretch. To his inside, in the #1 lane was the Argentinian horse, Canecao ridden by Fernando Perez. In front of Elliot was the number five horse, HORIZONTALYSPEAKING with Jaime Theriot aboard. Appellant had a "ton of horse" but he was boxed in.

When CANECAO dropped back a bit Elliott saw an opening on the rail and quickly moved into lane #1. While doing so Perez stood up in the saddle but Appellant felt he was just "showboating" and didn't really have to steady.

Appellant was asked about the statement in the Stewards' Report that, "In retrospect he wishes he had chosen to angle to the outside but nevertheless thought he protected his fellow riders given the situation." Elliott stated that this was not an admission of any kind rather just a truism that if he had taken to the outside, the way most traveled, he would not have been suspended.

B. Testimony of Kim Sawyer

"Sometimes you just have to eat it." Ms. Sawyer put it in racetrack slang. You can have a live horse that has nowhere to go-as in this case. There was no way to safely change lanes but appellant did it anyway, almost causing his mount, UNUSUAL TASTE to clip heels with CANECAO, and causing that rival to steady sharply. This was a "bit too aggressive" and constituted careless riding to Steward Sawyer.

C. Testimony of Grant Baker

In this case Steward Baker agreed with Steward Sawyer. In his view Appellant crossed over without sufficient clearance and interfered with the number four horse, CANECAO almost causing the rivals to clip heels. To his mind this was careless riding.

D. DVD

Unlike some Jockey cases this appeal is not readily resolved by the DVD of the race. One could make equally compelling argument from the film, that appellant tried to move into too small a space or alternatively that Mr. Peres was over dramatizing the "interference". The Stewards found that

Elliott was "a bit aggressive", hardly a ringing condemnation and yet the film does leave one with the feeling something is amiss.

The closeness of the case requires that it be resolved by Rule 1764 "The burden shall be on the appellant to prove facts necessary to sustain the appeal." The appellant has not met this burden.

#### CONCLUSION

Appellant's sole contention is that he did not ride carelessly in the race at issue in violation of Rule 1699. Appellant has failed to meet his burden of proof to show by a preponderance of the evidence that the Stewards' decision should be reversed in Case No. DMTV #048 (Rule 1764). *Green Trees Enterprises Inc. v Palm Springs Estates Inc.* (1967) 66 Cal2d 782, 784-785.

#### ORDER

Official Ruling DMDT #048, SAC16-0038, dated August 14, 2016, imposing a three-day suspension on appellant, STEWART ELLIOTT for careless riding under Rule 1699, in the Third Race at Del Mar Race Track on August 13, 2016 is hereby **AFFIRMED**.

10/03/16

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Dated



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STEFFAN IMHOFF  
Designated Appellate Judge

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