

**BEFORE THE CALIFORNIA HORSE RACING BOARD**

**STATE OF CALIFORNIA**

In the Matter of:  
**Appeal of the Board of Stewards Official  
Ruling #200, Santa Anita Winter/Spring  
Meet, dated June 18, 2017**

Case No. SAC 17-0025

**FLAVIEN PRAT  
CHRB License #303225**

**DECISION**

The attached Proposed Decision is hereby adopted by the California Horse Racing Board, with the following modification, as provided by Government Code Section 11517 (c) (2) (B):

1. The proposed suspension of four (4) racing days is reduced to two (2) racing days.

The Decision is hereby remanded to the Board of Stewards to issue a ruling and order imposing a two (2) day racing suspension.

IT IS SO ORDERED ON October 26, 2017.

CALIFORNIA HORSE RACING BOARD  
Chuck Winner, Chairman



Rick Baedeker  
Executive Director

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**In the Matter of:  
Appeal of the Board of Stewards  
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**Case No. SAC 17-0025**

**FLAVIEN PRAT**

**CHRB License #303225**

**Appellant**

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**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 Friday, August 25, 2017.

Philip Laird, Staff Counsel, represented CHRB.

Attorney Donald J. Calabria, Encino, California, represented the Appellant.

Mr. Prat did not appear.

Steward Scott Chaney testified for the CHRB.

Steward Kim Sawyer also testified for the CHRB.

Also present: Safety Steward Luis Jauregui.

Plesah Wilson, assistant to Judge Imhoff.

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

## **PROCEDURAL BACKGROUND**

FLAVIEN PRAT appeals from the Stewards' decision to suspend the jockey for his ride in the \$200,000 Summertime Oaks, a Grade 2 stakes. The race was run as the ninth race at Santa Anita on Saturday, June 17, 2017. The contest was for 3-year-old fillies at 1 1/16 miles on the dirt track. Prat's mount was on #2 horse SPOOKY WOODS. The official charts note that his mount drifted out and in the lane while MIKE SMITH's mount, #3 horse, IT TIS WELL, had to steady at the 6 1/2 and the 16<sup>th</sup> pole. SPOOKY WOODS saved ground stalking the pace, bid inside in the stretch, drifted out some in midstretch and drifted in from the whip nearing the 16<sup>th</sup> marker and fought back to the wire. Further as to IT TIS WELL, she pulled hard while a bit off the rail and steadied off the heels on the first turn, she continued to tug her way along and steadied again on the backstretch, angled in on the second turn, tried to bid inside in the stretch, but steadied off heels again.

Following an inquiry, Prat's mount was disqualified and placed fifth in back of her rival IT IS WELL for drifting in and causing Smith's mount to pull up to avoid clipping heels. Appellant denies that he rode carelessly or interfered with any of the other fillies in the race.

## **JOCKEY FILM REVIEW**

Jockey FLAVIEN PRAT appeared June 18, 2017, to review the ninth race, which involved a disqualification of his mount (ref 06-17-17). Mr. Prat stated he drifted out off the turn and while correcting this float, he guided his mount back to its original path.

"This was all true but when he returned to his original path there was a horse occupying that space that had to take up, to avoid clipping heels." In a unanimous vote Mr. Prat was issued the following ruling for careless riding:

### **LATS Ruling #200**

Jockey FLAVIEN PRAT, who rode SPOOKY WOODS in the ninth race at Santa Anita Park on June 17, 2017, is suspended for FOUR (4) racing days (July 1, 2, 3 and 4, 2017) for crossing over without sufficient clearance and causing interference, which resulted in the disqualification of his mount from third to fifth position. This constitutes a violation of California Horse Racing Board Rule 1699 (altering course without sufficient clearance and causing interference entering the stretch.) This constitutes a violation of California Horse Racing Board rule #1699 (Riding Rule – Careless Riding – second offense in last 60 days).

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 SAC 17-0025 (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 denied by CHRB, but it was granted by the Los Angeles Superior Court on June 21, 2017.

The hearing on appeal of jockey FLAVIEN PRAT was conducted by Hearing Officer/Appellate Judge Steffan Imhoff at the Del Mar Race Track, Executive Offices upstairs conference room, on August 25, 2017.

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 and Counsel's Trakus and Rule 1699(f) arguments.

#### **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.

## EXHIBITS

Appellant submitted the following exhibits:

Exhibit 1 – List of Appellant's mounts at Del Mar.

Exhibit 1A – List of Appellant's mounts at Santa Anita. (Previously mismarked as Exhibit 3).

Exhibit 2 – Literature on the Trakus System

Exhibit 3 – Thumb drive containing Trakus data from the ninth race at Santa Anita, June 17, 2017.

The Board submitted the following exhibits:

Exhibit A – Notice Pack

Exhibit B – DVD of the ninth race at Santa Anita, June 17, 2017.

## EVIDENCE

Appellant's Evidence:

Appellant neither testified nor provided an affidavit. His counsel relied on Appellant's statements at the jockey film review and Exhibit B, the DVD of the race, as well as Exhibits 1, 1A, 2 and 3.

Respondent's Evidence:

Testimony of Stewards Kim Sawyer and Scott Chaney, Exhibit A, the Notice Pack, and Exhibit B, the DVD of the race.

## DISCUSSION

1. **The Trakus System.** The Court has ruled that Exhibits 2 and 3 pertaining to the Trakus System are not admissible. Appellant, based on those rulings has made a motion for mistrial. The Trakus System is self-described as a system that provides customized real-time applications for broadcast and interactive media, powered by their

innovative tracking technology. Appellant has failed to provide the legal authority that would be necessary to render this information admissible under state or federal law. *Sargon Enterprises v. University of Southern California*, 55 Cal. 4<sup>th</sup> 747 (2012). *People v. Kelly*, 17 Cal. 3d 24 (1976). *Frye v. United States*, 293 F. 1013 (DC 1923). Because the Trakus System was for the fans' entertainment, and was clearly not information that could be or should be used by racing officials as part of their decisions, it was not admissible. Therefore the motion for a mistrial is denied. Although we give Counsel style points for creativity, the Trakus information is not admissible.

2. The DVD. As is often the case when the jockeys appeal their suspension for careless riding, the DVD of the race is the primary evidence. In the absence of testimony of his client, Counsel relied on what Mr. Prat stated at the jockey film review, that he drifted out off the turn and while correcting this float, he guided his mount, Spooky Woods, #2, back to the original path. He denied riding carelessly.

The Stewards had a somewhat different view of the evidence, however, as Steward Chaney put it, Prat's story "was all true, but when he returned to his original path there was a horse occupying that space that had to take up to avoid clipping heels." Steward Sawyer agreed with Chaney that Appellant had ridden carelessly and had forced Hall of Fame jockey, MIKE SMITH to take up his filly, #3, IT TIZ WELL, to avoid clipping heels.

The Court reviewed the DVD and has the following observations: It should be noted in the first instance that Mr. Smith's mount was a bit out of control. Prior to the interference alleged in this case, he had to pull up his mount because it was getting too close to clipping heels with the eventual winner, #6, FAYPIEN, ridden by RAFAEL.

BEJARANO. The problem was serious enough that Smith was standing up in the saddle for a good part of the backstretch.

As to the incident in the stretch, near the 16<sup>th</sup> pole, Appellant did float out to the second lane and back into lane one. The two horses, IT TIZ WELL and SPOOKY WOODS, were momentarily both headed for lane one, then Appellant used a right-handed whip, which caused his mount to move closer to the rail and cut off IT TIZ WELL, resulting in her rider checking and steadying off #2's heels. We are willing to assign some of the blame for this incident to IT TIZ WELL "pulling," "steadying," and "tugging" her way around the track. However, the majority of the blame must be assigned to Appellant's use of the right-handed whip, which caused his mount to take a sinister turn towards the rail. This was the primary cause of putting the two fillies in a "heel-clipping zone," and fully justified Appellant's suspension for careless riding.

#### **PENALTY**

1699(f) When penalizing a jockey for riding contrary to this rule the Stewards shall issue a greater penalty for (1) more than one infraction of this rule by the jockey within any contiguous 60 day calendar period. That section was invoked by the Stewards in this case to add an extra day to Mr. Prat's three-day suspension.

His Counsel objects. He presents statistical evidence for establishing Appellant's number of mounts ridden at both the Santa Anita and Del Mar meetings. He argues that since Appellant had more mounts than any other jockey in the Southern California Colony it was a violation of equal protection to expose him to this enhancement, when his numerous rides made him more likely to come under the provisions of 1699(f) than jockeys with fewer rides. However, Counsel has provided

no legal authority for this novel argument and while we, once again, give him style points for creativity, his argument must be rejected.

### **CONCLUSION**

Appellant's principal contention is that he did not ride carelessly in the race at issue in violation of Rule 1699, nor did he deserve a one-day enhancement under Rule 1699(f). 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. SAC 17-0025. (Rule 1764) *Green Trees Enterprises Inc. v. Palm Springs Estates Inc.* (1967) 66 Cal. 2d 782, 784-785.

**ORDER**

Official Ruling #200, SAC 17-0025, Santa Anita Winter/Spring Meet, dated June 18, 2017, imposing a four-day suspension on Appellant, FLAVIEN PRAT for careless riding under Rule 1699, in the Ninth Race at Santa Anita Race Track on June, 17, 2017 is hereby **AFFIRMED**.

9-19-17

Dated



**STEFFAN IMHOFF**  
Designated Appellate Judge

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