

BEFORE THE CALIFORNIA HORSE RACING BOARD
OF THE STATE OF CALIFORNIA

In the Matter of:

Fitness for Licensure

GAIL RUFFU
Applicant

Case No. SAC 10-0005
Case No. OAH 2009040051

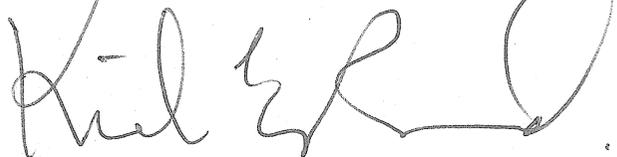
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the California Horse Racing Board as its Decision in the above-entitled matter.

The Decision shall become effective on January 21, 2010.

IT IS SO ORDERED ON January 15, 2010.

CALIFORNIA HORSE RACING BOARD
Keith Brackpool, Chairman

A handwritten signature in black ink, appearing to read "Kirk E. Breed", written over a horizontal line.

Kirk E. Breed
Executive Director

BEFORE THE
CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

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In the Matter of the Statement of Issues
Against:

GAIL RUFFU,

Respondent.

OAH No. 2009040051

PROPOSED DECISION

Administrative Law Judge Ralph B. Dash heard this matter on November 19, 2009, at Los Angeles, California.

Patricia A. Nevonen, Deputy Attorney General, represented Complainant.

Dennis P. Fuire, Attorney at Law, represented Gail Ruffu (Respondent).

Oral and documentary evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

FINDINGS OF FACT

1. Kirk E. Breed made the Accusation in his official capacity as the Executive Director of the California Horse Racing Board (Board).

2. Respondent submitted her application, dated November 19, 2008, for licensure by the Board as a horse trainer. The application was denied on the same day it was submitted, and this hearing ensued.

3. Respondent previously held a horse trainer's license. By order of the Board in Office of Administrative Hearings case number 2005030763, effective November 3, 2005, that license was suspended through the end of its term, September 30, 2008. The following is a portion of the Board's Decision in that matter, setting forth the most salient issues which affect these proceedings, beginning with paragraph 3 of the Legal Conclusions:

3. Cause exists to affirm the January 14, 2005, Stewards' Order because substantial evidence supports the conclusion that Appellant entered the barn of another trainer and removed the horse Urgent Envoy without the knowledge or permission of the trainer or the other owners of the horse.

California Code of Regulations, title 4, section 1889 provides that "[n]o person shall enter the stalls, shed row, tack rooms, feed sheds and the

immediate adjacent area of the locations, unless the person has prior approval of the trainer to whom the locations are assigned by the association.” Appellant entered the barn of Richard Baltas and removed Urgent Envoy without Baltas’ knowledge or approval.

Appellant admitted that she took Urgent Envoy from Richard Baltas’ barn and refused to return the horse to the trainer or the other owners. However, she argues that she had an ownership interest in Urgent Envoy that allowed her to take the horse from Baltas’ barn. Appellant’s ownership interest was only twenty percent and subject to the Syndicate Agreement signed by the five owners for the management of Urgent Envoy. Appellant’s twenty percent interest did not give her the right to take Urgent Envoy from the barn of another trainer and deny the other owners their interests in the horse.

In July 2004, the other four owners removed Appellant as trainer of Urgent Envoy which the Stewards determined was within the other owners’ power under the Syndicate Agreement. The agreement provided that Appellant served subject to the approval of the owners, and that 50% of the ownership could reject or change Appellant’s decisions regarding training matters, which reasonably included the decision regarding the chose [sic] of trainer for Urgent Envoy.

To the extent Appellant disagreed with the other owners’ decision to remove her as the trainer or Syndicate Manager for Urgent Envoy, her remedy should have been either a complaint to the Board of Stewards or to pursue her contractual dispute in a court of competent jurisdiction. Appellant chose instead to take the matter into her own hands and improperly remove the horse from the race track without the knowledge or approval of the other owners or the trainer of record. This conduct cannot be condoned.

4. Cause exists to affirm the January 14, 2005, Stewards’ Order because substantial evidence supports the conclusion that Appellant falsified the Departure Slip to transport Urgent Envoy horse [horse] from the Hollywood Park race track on December 23, 2004.

“The Board, in addition to any other valid reason, may refuse to issue a license or deny a license to any person who has, in pertinent part: “committed an act involving moral turpitude, or intemperate acts which have exposed others to danger, or acts in connection with horse racing and/or a legalized gaming business which were fraudulent or in violation of a trust or duty.” (Cal. Code of Regs., tit. 4, § 1489.) “No licensee shall engage in any conduct prohibited by this division nor shall any licensee engage in any conduct which by its nature is detrimental to the best interests of horse racing.” (Cal. Code of Regs., tit. 4, § 1902.)

The evidence showed Appellant falsified the Departure Slip used to transport Urgent Envoy from Hollywood Park on December 23, 2004. Appellant informed the gateman that the horse she was transporting was named "Engine And Boy" and indicated that the horse originated from her barn and not the barn of Richard Baltas. This information was untrue and it was not until Appellant left Hollywood Park with the horse that she telephoned the gateman and corrected the horse's name on the Departure Slip. Appellant did not offer a credible explanation for why the correct name was not entered on the Departure Slip when she exited the race track with the horse.

4. In addition to the above license suspension, the Board also ordered Respondent to return Urgent Envoy to the barn of its trainer and rightful owners within 10 days of her receipt of the Board's Decision. To date, Respondent has failed to return the horse. Respondent testified that the issue of possession of the horse is now the subject of civil litigation but did not offer sufficient documentation to support her testimony. In any event, by far the most important issue herein is whether, after having committed acts of moral turpitude, including the falsification of records, Respondent has sufficiently rehabilitated herself to the extent that her licensure would not adversely affect the public interest in maintaining the integrity of horse racing in California.

5. Respondent testified on her own behalf and presented numerous letters of reference and recommendation, all of which talked of Respondent's love of horses and commitment to being a first-rate trainer. However, Respondent's ability as a trainer is not at issue in these proceedings. As noted above, it is Respondent's rehabilitation from her acts of moral turpitude that is most germane. Respondent expressed no remorse for her past conduct. She testified that she "is pretty sure [she] would not make the same mistakes twice." She noted that if faced with a situation similar to that involving Urgent Envoy, she would not resort to "self-help" but would make use of available civil remedies. Respondent said nothing about her prior acts of forgery (falsification of documents) in order to achieve what she wanted. Use of fraud and deceit to achieve an end goes well beyond the concept of "self-help." Respondent offered no evidence that she has rehabilitated herself from that conduct.

* * * * *

CONCLUSIONS OF LAW

1. The burden of proof to obtain a professional or occupational license is on the applicant. (See, *Southern California Jockey Club, Inc. v. California Horse Racing Board* (1950) 36 Cal. 2d 167.) The standard of proof is a preponderance of the evidence. (See, Evidence Code section 115.) "Preponderance of the evidence means evidence that has more convincing force than that opposed to it." (citations omitted) . . . The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of evidence presented by each side is irrelevant." (*Glage v.*

Hawes Firearms Company (1990) 226 Cal.App.3d 314, 324-325.) (Emphasis in original.) In meeting the burden of proof by a preponderance of the evidence, Respondent “must produce substantial evidence, contradicted or uncontradicted, which supports the finding.” (*In re Shelley J.* (1998) 68 Cal.App.4th 322 at p. 329.)

2. Business and Professions Code section 19520, subdivision (a), provides:

Every person . . . who participates in, or has anything to do with, the racing of horses, including a horse owner, jockey, driver, apprentice, exercise rider, agent trainer, stable foreman, groom, valet, horseshoer, stable watchman, and every employee of a parimutuel department, shall be licensed by the board pursuant to rules and regulations that the board may adopt

3. California Code of Regulations, title 4, section 1489 provides, in pertinent part:

The Board, in addition to any other valid reason, may refuse to issue a license or deny a license to any person:

(g) Who has committed an act involving moral turpitude, or intemperate acts which have exposed others to danger, or acts in connection with horse racing and/or a legalized gaming business which were fraudulent or in violation of a trust or duty.

(j) Who has violated, or who aids, abets or conspires with any person to violate any provision of the rules or the Horse Racing Law.

4. Under the foregoing provisions of law, cause exists to deny Respondent’s application for licensure as a horse trainer by reason of Findings 3 and 4. As the court stated in *Morrison v. California Horse Racing Board* (2005) Cal.App.3d 211, 218, “the public’s interest in legitimate horse racing and wagering requires its protection from individuals the Board rationally believes will threaten the honesty, fairness and safety of the activity.”

5. The statutes relating to licensing of professions generally are designed to protect the public from dishonest, untruthful and disreputable licensees. (*Arneson v. Fox* (1980) 28 Cal.3d 440, 451.) Such proceedings are not for the primary purpose of punishing an individual. (*Camacho v. Youde* (1979) 95 Cal.App.3d 161, 165.) Rather, in issuing and disciplining licenses, a state agency is primarily concerned with protection of the public, maintaining the integrity and high standards of the profession, and preserving public confidence in licensure. (*Ibid.* See also, *Fahmy v. Medical Bd. of California* (1995) 38 Cal.App.4th 810, 817.)

6. Under Business and Professions Code section 482, a Board may grant licensure, even though it has a legal basis to deny an application, if it finds the applicant has been rehabilitated from his or her past conduct. Rehabilitation is a qualitative determination, not quantitative. One cannot just add up those criteria that have been met and those that have not in order to determine whether or not a person has been rehabilitated. These factors are just

indicators that a person has changed his or her ways and is, therefore, unlikely to reoffend. No one of them alone – in fact not all of them together – can guarantee that an individual is truly rehabilitated. Therefore, merely meeting these criteria does not excuse a person from responsibility for his or her prior criminal conduct nor entitle him or her to a license.

7. Remorse for one's conduct and the acceptance of responsibility are the cornerstones of rehabilitation. Rehabilitation is a “state of mind” and the law looks with favor upon rewarding with the opportunity to serve one who has achieved “reformation and regeneration.” (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Fully acknowledging the wrongfulness of past actions is an essential step towards rehabilitation. (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) Mere remorse does not demonstrate rehabilitation. A truer indication of rehabilitation is sustained conduct over an extended period of time. (*In re Menna* (1995) 11 Cal.4th 975, 991.) The evidentiary significance of misconduct is greatly diminished by the passage of time and by the absence of similar, more recent misconduct. (*Kwasnik v. State Bar* (1990) Cal.3d 1061, 1070.)

8. As set forth in Finding 5, Respondent expressed no remorse for her past conduct, nor did she present any evidence that she has been rehabilitated therefrom. As Respondent has presented no evidence of rehabilitation from her past conduct, she has not demonstrated her fitness for licensure.

* * * * *

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Respondent Gail Ruffu's application for licensure as a horse trainer is denied.

Date: 12-17-09



RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings