

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Appeal of the Board of
Stewards Official Ruling #036, Del Mar
Thoroughbred Club, dated August 15, 2013

Case No. SAC 13-0036

EDWIN MALDONADO
CHRB License #304542
Appellant

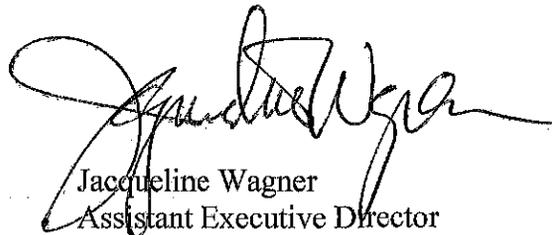
DECISION

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 November 21, 2013.

CALIFORNIA HORSE RACING BOARD
David Israel, Chairman



Jacqueline Wagner
Assistant Executive Director

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Ruling #036, Del Mar Thoroughbred Club,
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PROPOSED DECISION

EDWIN MALDONADO
CHRB License # 304542
Appellant

PROPOSED DECISION

This Appeal was heard on October 11, 2013, by Daniel Q. Schiffer, Esq., Hearing Officer, designated under Rule 1414 by the California Horse Racing Board (CHRB), at Arcadia, California, in the Marketing Conference Room at Santa Anita Race Track.

Appearances were made by Roger H. Licht, Esq., Licht & Licht, A Professional Corp., Attorneys on behalf of Appellant, Edwin Maldonado, 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 was Phil Miyazaki, CHRB Investigator.

Sworn testimony was provided by the Appellant Edwin Maldonado and by Kim Sawyer, Del Mar Thoroughbred Club Steward.

PROCEDURAL BACKGROUND

On August 15, 2013, suspended Appellant Edwin Maldonado for three (3) racing days because, during his ride on the horse "Distinctiv Passion" in the seventh race at Del Mar Thoroughbred Club on August 14, 2013, in violation of CHRB Rule #1699, he failed to make a proper effort to maintain a straight course in the stretch, causing interference which resulted in the disqualification of his mount from first to third.

On August 15, 2013, Appellant, through his attorney, filed a Notice of Appeal of the Stewards' Ruling via fax to the CHRB Sacramento Offices.

The suspension was ordered by the Stewards to run August 21, 22 & 23, 2013. Concurrently with filing his appeal Appellant requested that the CHRB stay Appellant's suspension but that request was denied by the CHRB on August 19, 2013. Appellate sought a Stay or Temporary Restraining Order from the Superior Court for the State of California, County of Los Angeles and said Stay was granted on August 20, 2013, by the Los Angeles County Superior Court, the Honorable Earl H. Maas III, Judge Presiding.

The two witnesses listed above were sworn and gave oral testimony. In addition the race film and Equibase chart of the race were received into evidence.

The appeal was submitted for decision on October 11, 2013.

SUMMARY OF THE EVIDENCE

APPELLANT EDWIN MALDONADO. Mr. Maldonado has been a licensed jockey for 13 years; the past 3 in California.

Mr. Maldonado testified on direct that he had ridden the horse Distinctiv Passion on a prior occasion and the horse had drifted out on that occasion.

In the seventh race on August 14, 2013, riding Distinctiv Passion, Mr. Maldonado testified that he used his reins and stick to control his horse. He had his stick in the right hand to get the horse to switch leads entering the stretch and then switched his stick to the left hand. When he hit his horse with the (left handed) whip the horse drifted out but barely touched the horse ridden by Gary Stevens ("Strong Wind"). He used his reins to attempt to pull the horse inward and away from Strong Wind.

Mr. Maldonado stated that Mr. Stevens reacted to being in close quarters by "standing up" in his saddle and, in Mr. Maldonado's opinion, this reaction was not appropriate as a rider stands up to slow the horse down. Appellant testified that a rider in this situation keeps riding and that in his opinion Mr. Stevens realized he was not going to win the race anyway so he put on an act to make the bump appear worse than it was. Mr. Maldonado termed this action "Hollywood."

Under cross examination Mr. Maldonado agreed that Mr. Stevens is a jockey of considerable accomplishment having, among his other accomplishments, won over 5,000 races, including multiple Kentucky Derbys, Preaknesses, Belmonts, and 8 Breeder's Cup races. He has been elected into the Racing Hall of Fame, has received the George Woolf Award and received an Eclipse Award for Outstanding Jockey.

Mr. Maldonado also agreed that that after he switched the stick to his left hand and, when he hit the horse repeatedly, it came out from the #2 path to the #5 path.

STEWARD KIM SAWYER. Ms Sawyer was one of three Stewards during the Del Mar Thoroughbred Club race meet. She participated in the decision in this case; which was based on Mr. Maldonado's actions in the race. In the Stewards' opinion the horse ridden by Appellant drifted out and impeded the horse that jockey Stevens was riding. This interference cost Strong Wind a better placing and therefore Distinctiv Passion was moved from first to third.

According to Ms. Sawyer the horse was already on its right lead when Mr. Maldonado began to hit it with his (left handed) whip. The horse came out and then continued to go out until the end of the race. In her opinion Mr. Stevens stood up because the bump jostled his balance and then, when he regained his balance, he tried to pursue his placing. Ms. Sawyer felt that Mr. Maldonado made no attempt to correct the horse's drifting out until after the damage had been done. The suspension was justified in her opinion because Appellant continued to whip the horse left handed after the horse started to drift out.

Steward Sawyer testified that the Stewards met with the jockeys at the start of the Del Mar race meet and told them that, if they engaged in this type of conduct, they would be disciplined. She did not have a present recollection of Mr. Maldonado being at this meeting but there was a "high probability" that he was in attendance.

Under cross examination Ms. Sawyer discussed the procedure by which the jockey meets with the Stewards following a race where there has been a disqualification and potential for a suspension. A notice is placed on the board of the Jockey's Room telling the jockey that he will have a meeting with the Stewards to determine if a suspension is warranted. Before the meeting the jockey can go to the film room to review the race. At the meeting the jockey and the Stewards review the films together and discuss the infraction. Mr. Maldonado was told that he was being suspended for his lack of effort to maintain a straight course. He had his whip, reins and body weight to guide the horse. If he had to go to the extreme to avoid contact and it cost him a better placing, then he should have done so to avoid the penalty phase.

THE CHART. The Equibase chart of the race shows that the race in question was the Green Flash Handicap with a purse of \$90,000 added. The Green Flash is a five furlong turf sprint. The winning time of 55.34 seconds was just .59 off the track record (54.75) for the distance. The last eighth of the race was run in a very rapid 11.71 seconds.

Mr. Maldonado's mount Distinctiv Passion, breaking from the #4 post, led throughout the race and won by a head over the second place horse

and another neck over the third place horse Strong Wind (ridden by jockey Stevens) and according to the chart "held gamely." Distinctiv Passion was one length in front of Strong Wind entering the stretch. Strong Wind "stalked between horses then inside the turn, came out in upper stretch, bid outside the leader in deep stretch then steadied when bumped between foes late."

The monetary penalty to the owner of Distinctiv Passion was the difference between \$56,400 to the winner and \$11,280 to the third place horse.

THE FILM. The films of the race were viewed mostly from the head on angle. This angle substantiates the testimony that the Distinctive Passion reacted to Mr. Maldonado's repeated left hand whipping in the stretch and came out steadily to bump the closing Strong Wind. If Mr. Maldonado attempted to use the reins to stop the horse from drifting out it is not apparent from the film. When the bumping occurs Mr. Stevens definitely reacts by standing up momentarily and then he continues riding to the wire.

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).

Mr. Maldonado first contends that he did everything he could to maintain a straight course but the horse, based on its similar behavior in its prior race, was at fault and caused the interference. The testimony on this issue is conflicting: Mr. Maldonado testified that he attempted to steer the horse with his reins while the Stewards did not observe any action on Mr. Maldonado's part. The film of the race is inconclusive.

Since Mr. Maldonado was aware of the horse's tendency to drift out in the stretch he should have been prepared to counteract the horse's known tendency if it reoccurred. Jockeys are required to use their best efforts to win a race and clearly they are very competitive; especially in a race of this

stature. Mr. Maldonado rides to win and is very successful using the front running style that he employed in this race. Given that the last eighth of a mile of this turf sprint was run in a very rapid time, with all three contenders gunning for the line, Mr. Maldonado appears to have gotten caught up in the heat of the race and neglected to heed the warnings given by the Stewards to the jockeys, i.e., if safety necessitated a worse placing then it was the jockey's duty to err on the side of caution. The evidence shows that Mr. Maldonado was unable to effectively control his mount using his reins but kept on whipping his horse on the left side as it bore out.

It is further Mr. Maldonado's contention that his fellow jockey Gary Stevens over reacted to the bump and, realizing he wasn't going to win the race, engaged in a "Hollywood" tactic by standing up. Appellant admitted that Mr. Stevens is a jockey of considerable accomplishment and accolade. This experience cuts both ways on this issue because Mr. Stevens would also know how to make the bump appear worse than it really was.

But the actual reaction of the jockey whose horse is bumped does not in itself resolve the issue. Rule 1699, upon which the Stewards relied in suspending Mr. Maldonado, provides:

During the running of the race: . . . (c) A horse which interferes with another and thereby causes any other horse to lose stride, ground or position, **when such other 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. (emphasis added).

The exception stated in this Rule is not the reaction of the jockey but rather whether his horse is at fault. The fact that Mr. Stevens reacted as he did is not dispositive of the issue.

Accordingly we come back to that portion of Rule 1699(d) which states:

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

Again referring to Rule 1699, which states in subsection (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.

When the horses entered the stretch Distinctiv Passion was a length in front of Strong Wind. Strong Wind launched his bid outside of Distinctiv Passion. By his own admission Mr. Maldonado allowed his mount to drift out from the the #2 path to the #5 path; directly into the path of Strong Wind (and the horse outside of Strong Wind which finished second) who were closing on the outside. A jockey of Mr. Maldonado's experience knows that the "come from behinders" will be doing just that. He had a duty not to cross over and impede those horses. Given the closeness of the finish, i.e., a head and a neck, Appellant's actions or lack thereof were in violation of Rule 1699.

Being disqualified cost Mr. Maldonado the sum of \$5,066 in jockey's fees. (See Rule 1632 for calculation). The fact that Distinctiv Passion was disqualified from first placing to third resulted in a substantial penalty to Appellant in terms of his jockey percentage of the purse that was taken away from him.

Steward Sawyer testified that the jockeys were instructed by them that, if they had to choose between winning and safety, they were to favor safety. Mr. Maldonado failed to heed that warning. Therefore the Stewards acted within their authority to suspend Mr. Maldonado for the riding infraction (Rule 1528).

There is substantial evidence that Mr. Maldonado failed to make the proper effort to maintain a straight course and, even though the disqualification of his mount by the Stewards resulted in a monetary loss to Mr. Maldonado, still he has not shown that the Steward's decision to suspend him should be reversed. (Rule 1764).

ORDER

Official Ruling of the Board of Stewards of Del Mar Thoroughbred Club, dated August 15, 2013, DMTD #036, imposing a three (3) day suspension on Appellant Edwin Maldonado, Lic # 304542, for failure to make the proper effort to maintain a straight course in the stretch, causing interference which resulted in a disqualification under Rule 1699, in the seventh (7) race at Del Mar on August 14, 2013 is hereby CONFIRMED.

Dated: October 30, 2013

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

DANIEL Q. SCHIFFER
Hearing Officer