

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:

**Appeal of the Board of Stewards
Official Ruling # 48, Hollywood Park
Racing Association,
Dated July 12, 2013**

Case No. 13SAC 0025

**EDWIN MALDONADO
CHRB License # 304542
Appellant**

DECISION AFTER NONADOPTION OF PROPOSED ORDER

This Matter was originally heard by the Board of Stewards on July 12, 2013. On that date, the Board of Stewards issued Official Ruling #48, which suspended Appellant Edwin Maldonado for three (3) days for violation of California Horse Racing Board Rule 1699 (Riding Rules – Careless Riding).

Appellant, through his attorney, filed a timely Notice of Appeal of Official Ruling #48. The three day suspension was stayed by Order of the Los Angeles County Superior Court pending resolution of this Appeal.

Daniel Q. Schiffer, Hearing Officer designated under Rule 1414 by the California Horse Racing Board heard this Appeal in Del Mar, California, on August 23, 2013.

Attorney Roger H. Licht, Licht & Licht, A Professional Corporation, represented Appellant Maldonado.

Supervising Investigator Rick Amieva, California Horse Racing Board, represented the Board.

Evidence was received, the record was closed and the Matter was submitted for preparation of a Proposed Decision on August 23, 2013. A Proposed Decision was issued on September 12, 2013.

By Order dated October 28, 2013, the California Horse Racing Board rejected the Proposed Decision and elected itself to decide the Matter on a review of the record, including the transcript, under the provisions of Government Code section 11517, subdivision (c)(2)(E). The Appellant was notified of the Decision to Non-adopt the Proposed Decision, via registered mail, on October 28, 2013. On December 3, 2013, Appellant was notified, via registered mail, the administrative record, including the transcript, was available for receipt.

Appellant, through his attorney, presented a written argument as authorized in the California Horse Racing Board Decision after Non-adoption of Proposed Decision, dated October 28, 2013.

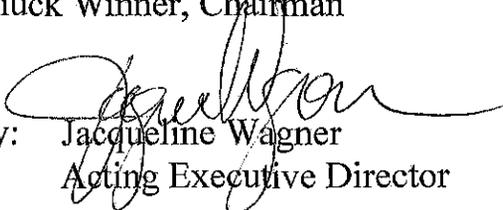
The California Horse Racing Board has reviewed the Matter on the record and issues its Decision in the Matter as follows:

The Proposed Decision is hereby modified to reflect Appellant failed to meet his burden of proof. Appellant has not produced new evidence of a convincing nature which would render the Board of Stewards Official Ruling incorrect. The preponderance of evidence in the Matter establishes that Appellant engaged in careless riding during the 7th Race at Betfair Hollywood Park on July 11, 2013. Appellant failed to make the proper effort to keep his horse from lugging in further as horses entered the stretch. Appellant, in trying to get his horse to switch leads, actually encouraged the inward movement. As a consequence, another jockey was placed in harm's way.

The attached Proposed Decision of the Hearing Officer is hereby modified to reflect that the Appellant Edwin Maldonado is suspended for three (3) days for violation of California Horse Racing Board Rule 1699 (Riding Rules – Careless Riding). During the term of his suspension all license and license privileges of Appellant Edwin Maldonado are suspended, save and except that the suspension shall not prohibit participation in designated races pursuant to California Horse Racing Board Rule 1766 (Designated Races). The actual days of suspension are to be set by the Board of Stewards.

IT IS SO ORDERED ON January 22, 2014.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman

By: 
Jacqueline Wagner
Acting Executive Director

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:		
Appeal of the Board of Stewards Official		Case No. 13A 0025
Ruling #048, Hollywood Park Racing Assn.,		
Dated July 12, 2013		
EDWIN MALDONADO		
CHRB License # 304542		
Appellant		

PROPOSED DECISION

This Appeal was heard by Daniel Q. Schiffer, Esq., Hearing Officer designated under Rule 1414 by the California Horse Racing Board (CHRB), at Del Mar, California, in the DMTC Executive Offices on August 23, 2013.

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 were Steward Kim Sawyer and Saul Marquez, Jr.

Sworn testimony was provided by the Appellant, and jockey Alex Jiminez for Appellant and by Scott Chaney, Steward for the CHRB.

PROCEDURAL BACKGROUND

On July 12, 2013, Appellant, through his attorney, filed a Notice of Appeal via fax to the CHRB Sacramento Offices.

Concurrently with filing his appeal Appellant requested that the CHRB stay Appellant's suspension but that request was by the CHRB on July 15, 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 July 16, 2013, by the San Diego County Superior Court, the Honorable James C. Chalfant, Judge Presiding.

The CHRB made an oral motion to dismiss the Appeal on grounds that the Appeal cited Business and Professions Code, sec. 19440 as authority to overturn the Stewards' decision; which it was argued was an erroneous basis for the Appeal. Review of the record however showed that the code section was cited as authority for Appellant's Ex Parte Request for a Stay heard by the San Diego County Superior Court but was not cited in the Notice of Appeal filed with the CHRB. Therefore, even though an erroneous cite may have been grounds for denial of the Stay by the Superior Court, the error did not invalidate the Notice of Appeal and the CHRB's Motion was denied.

Further the parties on the record waived the hearing time specified in Rule 1493 requiring ten (10) days notice of the hearing date of the Appeal.

The appeal was submitted for decision on August 23, 2013.

UNDERLYING RULING

Appellant rode the horse named "Pulpit's Express" to win the seventh (7) race at the Betfair Hollywood Park Race Track on July 11, 2013. The race was conducted on the turf course of the track. The Stewards disqualified Pulpit's Express from first to finish behind the horse ridden by Mr. Bejarano.

Appellant appeared before before the Stewards the following day and, after reviewing the videotape of the race with them, the Stewards issued the following ruling:

"Jockey Edwin Maldonado is suspended for THREE (3) DAYS (July 18, 19 and 20, 2013) for altering course without sufficient clearance and causing interference which resulted in the disqualification of his mount "Pulpit's Express" in the seventh race at Betfair Hollywood Park on July 11, 2013. This constitutes a violation of CHRB rule 1699 (Riding Rules-careless riding).

The term of this suspension shall not prohibit participation in designated races pursuant to CHRB rule 1766 (Designated Races)."

Dated July 12, 2013 and signed by Stewards C. Scott Chaney, Tom Ward & Kim Sawyer.

THE EVIDENCE

ALEJANDRO (ALEX) JIMINEZ: Mr. Jiminez has been a licensed as a jockey for the past 14 years. Based on his review of the film videotape he testified that Mr. Maldonado had a hold on his horse and never allowed him to drift in. When the horse was trying to drift in Mr. Maldonado pulled with the right rein but the horse did not switch leads and stayed on his left lead. Mr. Bejarano (on the middle horse) was placed in a bad spot. The horse was much the best and won by 5-6 lengths. Mr. Jiminez said that Appellant had the reins in both hands and the reins dangled on the left side because Appellant was trying to make a cross in order to shorten his reins. But he was pulling the reins with his right hand to try and straighten his horse. He looked behind and possibly yelled that his horse was drifting in and then switched his stick to his other hand following the incident.

EDWIN MALDONADO: Mr. Maldonado has been a licensed jockey for 12 years; first in Texas, then Louisiana and for the past 21/2 years in California. He testified that he attempted to stay in his path the whole time. When the horse initiated his moving to the inside he was unable to react to stop him. It was his opinion that the inside horse came out from the rail and caused the horse in the middle to be pushed toward his horse. He felt he could not have done anything more to avoid the incident. He stated that horses run from movement and he showed his horse the reins to make him go faster. A horse normally switches leads at this point in the race but this horse did not switch leads and started coming in. Appellant grabbed his right rein and the horse's head is tilted to the outside as he tried to correct

his path. He stated that it was the inside horse that pushed the middle horse out into his path.

SCOTT CHANEY: Mr. Chaney has been a Steward for the approximately 8 years. Mr. Chaney testified that Mr. Maldonado's horse came up three horses wide and then Appellant allowed his horse to drift in causing him to clip heels with Mr. Bejarano's mount. He crossed over in front of his rival. It appeared to him that the horse was "lugging in" and did not switch leads. In his opinion Mr. Maldonado threw his reins away and allowed his horse to cause the dangerous situation. He felt that the Appellant's assessment that the middle horse was just in a bad position was an absurd conclusion. In Mr. Chaney's opinion Appellant saw Mr. Bejarano's horse and did not keep his horse straight until he was clear of his competitor's horse.

THE FILM: The film was viewed a number of times from various angles. In addition to the testimony outlined above the tape showed that the three horses were running together as they were exiting the turn and the inside of the three horses was in the "one" path along the inside rail. As the horses straightened out the inside horse drifted out from that path into the "two" path. At that point the horse in the middle, while never in contact with the inside horse, appears to move outward. The tape shows Mr. Maldonado looking back toward Mr. Bejarano just before the clip occurred.

DISCUSSION.

Three horses came out of the final turn in unison with Appellant's horse on the outside. Appellant held the reins in both hands. It appears that Mr. Maldonado had his whip in his right hand to help him guide the horse around the sharp left turn of Hollywood Park's turf course. The horse was running on his left lead. Mr. Maldonado reasonably expected his horse to change leads from left to right as he straightened out (as the horse was trained to do). However when he reached with his left hand to grab a cross of the reins, his action spurred the horse to travel past the two horses on his inside. At that point, as his acceleration carried him past the other horses, the horse did not change leads, but instead veered sharply to the left on his left lead. He pulled right on the reins to correct this unexpected movement, and, although Mr. Maldonado attempted to correct his path, the

horse failed to straighten and veered into the path of the middle horse. Since Appellant had not switched his whip into his left hand, he could not use that mechanism to control the horse once it started to swerve inward. Appellant was using proper riding technique to negotiate the (left-handed) turn so one of the questions to be resolved is whether or not he should have transferred the whip before the horse accelerated past its competitors. In this instance, because the incident happened before the horses had completely straightened out at the conclusion of the turn, it would be premature for Appellant to have switched the whip to his inside hand.

Appellant has on appeal raised the issue of the inside horse of the three moving out from its path along the rail and pressing toward the middle horse at the instant that Mr. Maldonado's horse was starting to come in. The video tape shows that the inside horse comes out at least one path as he is exiting the turn. Although the inside horse does not appear to have come into contact with the middle horse, this movement was definitely within Mr. Bejarano's (on the middle horse) perception and he was attempting to react to the rapidly changing circumstances; first by trying to move his mount wider and yelling at Mr. Maldonado (as shown by Mr. Maldonado looking back). Mr. Maldonado looked back at Mr. Bejarano just before that rider's horse clipped heels with his horse. Mr. Bejarano sensed the dangerous place he was in and did what he could do to avert disaster and his cry out to Mr. Maldonado helped avoid the disaster. Only because of fortuitous circumstances the middle horse stumbled but did not fall. Clearly a disaster of potentially huge consequence was narrowly avoided.

The incident comprises a complicated series of events that happened in a very short period of time. There were several causal actions which contributed to the near disaster; not all of which were in the control of Appellant. Mr. Maldonado appeared to be riding as a jockey should in that point in the race and he did what he could to control the horse when it veered inward from its proper path. First, a trained and seasoned horse did not change leads as he should have done. Then the inside horse came out and placed the middle horse in tight quarters. These factors combined to influence the event unfolding as it did. Appellant reacted when he realized that his horse had not switched leads and was lugging inward and that Mr. Bejarano was in a precarious position. His reaction may have made the

difference that minimized the clip and saved Mr. Bejarano's horse from falling. It is therefore difficult to find Mr. Maldonado culpable for his actions even though there was clear endangerment of a fellow competitor.

While the Stewards, in making their decision to suspend Appellant, considered the the failure of Mr. Maldonado to control his horse they did not factor in the other causal force that contributed to the endangerment that ensued. With the three horses in tight quarters, when Appellant's horse veered left, the outward push from the inside horse was a factor that aggravated the precariousness of the situation. It would be unfair to make Mr. Maldonado responsible for this additional factor outside of his control.

The Appellant has therefore presented new evidence of a convincing nature pursuant to B & P C sec 19517(a) that reasonably justifies the reversal of the Steward's decision to suspend him.

ORDER

Official Ruling Hollywood Park Racing Association, dated July 12, 2013, HRT# #048, imposing a three (3) day suspension on Appellant Edwin Maldonado, Lic # 304542, for careless riding under Rule 1699 in the seventh (7) race at Betfair 7Hollywood Park on July 11, 2013 is hereby REVERSED.

Dated: September 12, 2013

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

DANIEL Q. SCHIFFER
Hearing Officer