# BEFORE THE HORSE RACING BOARD

# STATE OF CALIFORNIA

In the Matter of:

**Appeal of the Board of Stewards Official Ruling #97, Del Mar Thoroughbred Club, dated September 8, 2010**

Case No. SAC 10-0050
OAH No. 2011020025

**PETER MILLER**
**CHRB License #102930**
**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 shall become effective on November 18, 2011.

IT IS SO ORDERED ON November 17, 2011.

CALIFORNIA HORSE RACING BOARD
Keith Brackpool, Chairman

Kirk E. Breed
Executive Director

BEFORE THE HORSE RACING BOARD
STATE OF CALIFORNIA

| | |
|---|---|
| In the Matter of the Appeal from the Board of Stewards Official Ruling DMTD #97, Del Mar Thoroughbred Club, dated September 8, 2010,<br><br>PETER MILLER,<br><br>Appellant. | CHRB Case No. SAC 10-0050<br><br>OAH Case No. 2011020025 |

**PROPOSED DECISION**

Administrative Law Judge Jankhana Desai, Office of Administrative Hearings, State of California, heard this matter on August 24, 2011, in Los Angeles, California.

Bruce W. Reynolds, Deputy Attorney General, represented the California Horse Racing Board (CHRB).

Peter Miller (Appellant) was not present at hearing; he was represented by Victor Huerta, Attorney at Law.

The record was held open until August 31, 2011, for both parties to submit closing briefs, and to thereafter submit reply briefs by September 7, 2011. Both parties made timely submissions. CHRB submitted Respondent CHRB's Supplemental Trial Brief and Respondent CHRB's Reply Brief, which documents have been marked for identification as Exhibits 4 and 5, respectively. Appellant submitted his Points and Authorities in Support of Appellants Request for Set-Aside and Response to Respondent's Brief, which documents have been marked for identification as Exhibits A and B, respectively. Along with Appellant's Points and Authorities in Support of Appellants Request for Set-Aside, Appellant submitted a one-page letter from Allen Tepper, marked for identification as Exhibit C. CHRB objected to the admission of the letter into evidence as untimely. This objection was sustained. The record was closed on September 7, 2011.

## FACTUAL FINDINGS

1. Appellant is a horse trainer. He appeals the September 8, 2010 Official Ruling DMTD #97, Del Mar Thoroughbred Club, of the Board of Stewards.[1] In that Ruling, the Board of Stewards fined Appellant $2,000 for violating CHRB rule 1561, Duties of the Racing Veterinarian – Failure to Follow Instructions of the Racing Veterinarian Following the Ninth Race on August 1, 2010.

2. Appellant appealed timely. Appellant argues that: 1) CHRB rule 1561, is an explanatory or permissive rule, not a prohibitive one; it grants the veterinarian permissive authority to treat or euthanize the horse with consent of the owner, and not superior possession rights to those of the owner 2) CHRB rule 1561 explains the duties of a racing veterinarian and is not a conduct-regulating or prohibitive section; it is not violable by any third party and does not impose duties upon the trainer; and (3) the racing veterinarian, who acts pursuant to the CHRB's authority, has no power to dispossess an owner of his horse particularly over the owner's objection, or the objection of the trainer as an agent of the owner.

3. The parties in the instant proceeding provided no additional evidence; both parties proffered legal argument, and submitted on the record of the September 1, 2010 hearing before the Board of Stewards.

4a. The facts, established at the September 1, 2010 hearing, are largely undisputed. The record in the September 1, 2010 hearing before the Board of Stewards established the findings set forth in Factual Findings 4b and 4c directly below.

4b. On August 1, 2010, the horse "Night Justice" trained by Appellant was entered in the ninth race at the Del Mar Race Track. Jockey Patrick Valenzuela, who was racing the horse, eased the horse near the finish, believing the horse felt weak. Racing veterinarian, Dana Earl Stead, conducted a cursory examination of the horse, tranquilized the horse, and radioed for the horse ambulance to transport the horse to Appellant's barn. Appellant arrived at the scene, took the horse away from Dr. Stead's assistant, attempted to explain that the horse did not like being loaded into the van, and against Dr. Stead's direction, walked the horse off of the track. Appellant walked the horse to his barn, cooled him off with cold water, and had him examined by Appellant's private veterinarian, Joseph Dowd. Dr. Dowd examined the horse and concluded that the horse was sound and was just suffering from exhaustion. Dr. Stead reported the incident to the CHRB. Consequently, the Board of Stewards concluded that Appellant's behavior was in violation of CHRB rule 1561 since he failed to follow the instructions of Dr. Stead.

---

[1] In that underlying hearing held before the Board of Stewards on September 1, 2011, Appellant and the CHRB were represented by counsel and had the opportunity to present evidence, examine witnesses, and provide legal argument.

4c. Although Appellant's actions were in contradiction to Dr. Stead's direction, nothing in the record suggests that Appellant was not acting in what he believed was in the best interest of the horse.

5. Appellant argued at the underlying hearing, as he did in the instant proceeding, that the Board of Stewards incorrectly applied and interpreted CHRB rule 1561 as it pertains to Appellant (and similarly situated licensees). Appellant argued that CHRB rule 1561 is an explanatory statute, not prohibitive, that allows the racing veterinarian permissive authority to treat race horses, but that this authority is not superior to the authority of the owner or owner's agent. After considering Appellant's arguments at the September 1, 2010 hearing, the Board of Stewards wrote in their Ruling, "This rule expressly states that both owners and trainers submit to the direction of the racing veterinarian if they choose to run their horses in California, and ignoring, nay disobeying, the direction of the racing veterinarian while the hose is still on the track represents a violation of rule 1561. Frankly, why Mr. Miller ignored the order, even if he genuinely believed that it was in his horse's best interests, is not relevant to this violation. In order for racing to proceed in an efficient and more importantly, safe manner, the racing veterinarian must be free to go about his duties without interference from licensees. In fact, they consent to it. For Mr. Miller to attempt to substitute his judgment for a licensed veterinarian in matters of this nature, would not only undermine Dr. Stead's authority but compromise the safety of all participants, and for purposes of this case violates rule 1561...."

## LEGAL CONCLUSIONS

1. California Horse Racing Board rule 1561 states:

> The Racing Veterinarian shall examine each horse when it is first entered to race at the race meeting and he shall report to the stewards any horse which in his opinion is not of the age or condition which is satisfactory for the type of racing to be conducted at the meeting. The stewards may declare any such horse so reported as ineligible to be entered or started at the meeting until such time as the Racing Veterinarian certifies such horse to be raceably sound. The Racing Veterinarian shall be present in the paddock, on the race course, and at the starting gate during the saddling, the parade, and until the horses are dispatched from the gate for the race, and he shall examine any horse when there is a question as to the physical condition of such horse. He shall report any horse which in his opinion is incapable of physically exerting its best effort to win to the stewards who may declare such horse from the race. The Racing Veterinarian shall examine any horse which appears in physical distress during the race, at the finish of the race and he shall report such horse together with his opinion as to the cause of the distress to the stewards and to the official

veterinarian. The Racing Veterinarian has the authority to treat any horse in event of an emergency, accident or injury, and he is authorized to humanely destroy any horse which in his opinion is so seriously injured that it is in the best interests of racing to so act, and *every horse owner and trainer in participating in a race in this State does consent thereto*. The Racing Veterinarian shall recommend to the official veterinarian those horses which by reason of physical disability should be placed on the Veterinarian's List and he may recommend removal from the list of those horses which in his opinion can satisfactorily compete in a race.

(Italics added.)

2. Business and Professions Code section 19517 states in part:

(a) The Board, upon due consideration, may overrule any steward's decision other than a decision to disqualify a horse due to a foul or a riding or a driving infraction in a race, if a preponderance of the evidence indicates any of the following:

(1) The steward mistakenly interpreted the law.

(2) New evidence of a convincing nature is produced.

(3) The best interests of racing and the state may be better served.

3. Appellant bears the burden of proof by a preponderance of the evidence. (Bus. & Prof. Code, § 19517, subd. (a).)

4. There was no evidence that the Board of Stewards mistakenly interpreted the law. (Bus. & Prof. Code, § 19517, subd. (a)(1).) The plain language of CHRB rule 1561 clearly states that the owner and trainer *consent* to the racing veterinarian treating the horse. To find that the rule does not impose a duty upon Appellant in this case would be akin to ignoring the language of the rule that explicitly states "...every horse owner and trainer in participating in a race in this State does consent thereto." Simply because the rule is entitled "Duties of the Racing Veterinarian" does not mean the clear and unambiguous text of the rule can be ignored.

5. In support of Appellant's position, Appellant offered *Jamgotchian v. Slender*, (2009) 170 Cal.App.4th 1384. Appellant contends that *Jamgotchian* stands for the proposition that the Stewards cannot dispossess an owner of his horse in any situation. Appellant further argues that *Jamgotchian* stands for the proposition that the trainer need not comply with the racing veterinarian's instructions as he has

possessory rights in the horse and therefore, has the right to prevent a trespass on his chattels. *Jamgotchian* considered the authority of the Stewards to prevent an owner from retrieving his horse and requiring that the horse be raced against the owner's wishes. In *Jamgotchian*, Jamgotchian – the owner of the horse – attempted to "scratch" the horse from the race (not run his horse in a race after he had officially declared that the horse would run). The Stewards prevented the horse's removal from the race and the horse was forced to run in the race against the owner's wishes. The horse was injured. The Court in *Jamgotchian* held, in part, "There is no discretion vested in the stewards to bar an owner from retrieving his or her horse before a race is run."

6. Appellant's reliance on *Jamgotchian* is misplaced. The facts in *Jamgotchian* are distinguishable from the facts in the instant case. Unlike the Stewards in the *Jamgotchian* case, here, the racing veterinarian did not exceed his authority. In fact, his conduct fell within the parameters of CHRB rule 1561. Moreover, in the instant case, there is explicit language that requires owners and trainers to "consent" to the racing veterinarian treating the horse in these circumstances.

7. There was no new evidence of a convincing nature to support Appellant's arguments. (Bus. & Prof. Code, § 19517, subd. (a)(2).) The evidence in the record below established and supports the Board of Stewards' findings.

8. There was no evidence to support a conclusion that reversing the Steward's decision would be in the best interests of horseracing or that California would be better served. (Bus. & Prof. Code, § 19517, subd. (a)(3).)

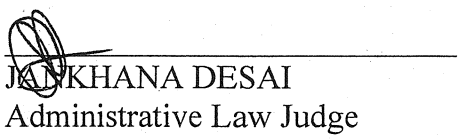
9. Based on the foregoing, it is appropriate to sustain the Board of Stewards' Ruling and deny Appellant's appeal.

10. Cause exists to deny Appellant's appeal, pursuant to Business and Professions Code section 19517, as set forth in Factual Findings 1 through 5, and Legal Conclusions 1 through 10.

## ORDER

Respondents' appeal is denied and the Board of Stewards' Official Ruling, DMTD #97, dated September 8, 2010, is sustained.

DATED: October 7, 2011



JANKHANA DESAI
Administrative Law Judge
Office of Administrative Hearings