

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Appeal from the Board
of Stewards Official Ruling #051, Del Mar
Thoroughbred Club, dated August 20, 2017

Case No. SAC 17-0046

COREY NAKATANI
CHRB License #112150
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 a (3) day riding suspension.

IT IS SO ORDERED ON December 14, 2017.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman



Rick Baedeker
Executive Director

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**In the Matter of the Appeal of Stewards
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COREY NAKATANI

CHRB License #112150

Appellant

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 Santa Anita Race Track, Arcadia, California, Board of Stewards Office on October 20 , 2017 at 11:00 a.m..

Philip Laird, Staff Counsel, represented CHRB.

Attorney Bing Bush, Del Mar, California, represented the Appellant.

Mr. Nakatani testified in his own behalf.

Steward Scott Chaney testified on behalf of CHRB

Steward Kim Sawyer testified for the CHRB.

Also present was Matt Nakatani, Appellant's agent.

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

PROCEDURAL BACKGROUND

Jockey Corey Nakatani appeals a five-day suspension handed down by the Del Mar Stewards on August 20, 2017. The Appeal concerns Jockey Nakatani's ride in the Grade 1 Del Mar Oaks, the race that determines the champion 3 year old thoroughbred turf filly at the seaside track. The contest is disputed on the Jimmy Durante turf course at 9 furlongs and offers guaranteed purse money of \$300,000. It was run on August 19, 2017 as Race 10 on the eleven-race program. Nakatani rode the #11 filly, PACIFIC WIND. According to the Equibase Chart, PACIFIC WIND stalked three deep then four wide into the stretch, came in some in mid-stretch and could not summon the necessary late kick. The evidence was undisputed during that stretch drive PACIFIC WIND twice interfered with KATHY'S SONG, the #8 filly, ridden by Gary Stevens. That rival chased between horses, continued between foes on the second turn and into the stretch, steadied sharply in tight mid-stretch then steadied again off heels in deep stretch. The issue is whether or not the interference was caused by a restless filly or by a careless jockey.

JOCKEY FILM REVIEW

The Stewards followed a slightly unorthodox procedure where they reviewed two different races in the same hearing. The following is the conclusion from the Stewards' viewpoint. Guild rep Darrell Haire and Agent Matt Nakatani represented Jockey Corey Nakatani in a review of the tenth and eleventh races run on 8-19-17. In the tenth race Mr. Nakatani, while trying to make his mount, PACIFIC WIND, change leads, directed it inward causing a horse to his inside to take up sharply for seven strides. The offended horse, KATHY'S SONG, angled inward and was pursuing a better placing when Nakatani again drifted inward, making no effort to correct, causing the same horse to check, taking away its chances for a better placing for a second time. In the eleventh race in the stretch Mr. Nakatani's mount stepped out causing a horse to his outside to clip his heels.

In a **majority decision** listed in a ruling below, Mr. Nakatani received a five-day suspension for the interference in the tenth race and **was not found culpable for the incident in the eleventh race**. Steward Baker voted for a three-day suspension for the tenth race disqualification and a four-day suspension in the eleventh race inquiry. The difference in the two opinions was either a five-day suspension or two suspension rulings totaling seven days.

The Stewards Issued the Following Ruling
DMTD Ruling #1051

Jockey Corey Nakatani, who rode PACIFIC WIND in the tenth race at Del Mar Race Track on August 19, 2017, is suspended for FIVE (5) racing days (August 26, 27, 30, 31 and September 1, 2017) for failure to keep a straight course, and causing interference in the stretch, which resulted in the disqualification of his mount from ninth to tenth. This constitutes a violation of California Horse Racing Board Rule #1699 (Riding Rules – careless riding).

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 SAC17-0046 (Rule 1761). Appellant filed a second notice of appeal specifically attacking the five-day suspension as a violation of due process.

Appellant, through counsel, has also filed a timely request for a stay of the suspension pending a decision by the CHRB (Rule 1762). A stay was denied by CHRB On August 22, 2017, but was granted by Judge Timothy Casserly, San Diego Superior Court, on August 23, 2017.

The hearing on appeal of Jockey Corey Nakatani was conducted by Hearing Officer/Appellate Judge Steffan Imhoff at the Santa Anita Race Track, Stewards Office, on October 20, 2017 at 11AM.

The Board presented the testimony of Stewards Scott Chaney and Kim Sawyer, as well as the investigative file (Exhibit 2) and a DVD of the race (Exhibit 1). Appellant testified in his own behalf and while conceding that his filly interfered with Gary Stevens' filly, he denied riding carelessly. He testified that he was just trying to get her to change leads when she took an unexpected trip toward the rail.

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 whether or not a 5-day suspension was justified.

RULE 1699

During the running of the race:

- a. A horse shall not interfere with any other horse. Interference is defined as bumping, impeding, forcing or floating in or out or otherwise causing any other horse to lose stride, ground, momentum or position.
- b. A horse which interferes with another as defined in subsection (a) may be disqualified and placed behind the horse so interfered with if, in the opinion of the Stewards, the horse interfered with was not at fault and due to the interference lost the opportunity for a better placing.
- c. Jockeys shall not ride carelessly, or willfully, so as to permit their mount to interfere with any other horse.

- d. Jockeys shall not strike or strike at another horse or jockey so as to impede, interfere with, intimidate or injure.
- e. 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.
- 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 or (2) any infraction which, in the opinion of the Stewards, jeopardized the safety of another horse or jockey.

EVIDENCE

A. Interference by PACIFIC WIND

The testimony of Stewards Sawyer and Chaney, and Nakatani, as well as the DVD, is all consistent. PACIFIC WIND in a quick move to the rail interfered with KATHY'S SONG costing her the chance of a better placement in the race. However, since the difference was only between ninth and tenth place, Steward Chaney was of the opinion that it was unnecessary to issue a disqualification. The majority disagreed and PACIFIC WIND was set down and placed in tenth, in back of KATHY'S SONG. That decision is not reviewable (Rule 1761).

B. Nakatani's culpability

The critical evidence is the DVD, which shows the following: Coming into the stretch PACIFIC WIND was two lanes outside KATHY'S SONG and taking dead aim at the leading horses. Her chances were compromised by being on the wrong lead. Mr. Nakatani, probably knew that to have a chance to win he needed to get his mount to change leads. First he used his left-handed crop, to no avail. Then the filly went squirrely with a wicked quick move to the inside, resulting in hard contact with Mr. Stevens' mount.

Petitioner "bumped" his left inside rein twice to correct the path of travel. In the course of the second "bump" the horse responded by veering back in, again causing interference. Petitioner was trying to take corrective action to maintain a straight path of travel, but was unable to do so. Petitioner, with nearly three decades of top-level experience could have done more to disengage his mount from a potentially dangerous situation.

There was also an incident in deep stretch, practically at the finish line, that was relatively minor and would not by itself result in a suspension, but provides further support for the Stewards' decision.

CONCLUSION – CARELESS RIDING

Appellant's contention is that he did not ride carelessly in the race at issue in violation of Rule 1699. It is a close decision, but the DVD and the other evidence fail to support Mr. Nakatani's contention. Appellant 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. DMTV #051 (Rule 1764). *Tripp v. Swoap* (1976) 17 Cal. 3d 671 682-683.

PENALTY – FIVE DAYS

Based on his ride in the 11th (not the 10th) race at Del Mar on August 19, 2017, the Stewards increased the Appellant's suspension from three days to five days. The Appellant and Respondent were invited to file briefs on the propriety of this "enhancement." While both parties made compelling arguments, the more convincing position was articulated by Appellant. As stated in Appellant's brief, "On review on August 20th, the Stewards considered this alleged infraction in Race 10 and rendered Ruling #051 at issue here, giving Petitioner a suspension of five days. The Stewards also considered an entirely different alleged infraction in an entirely different

race (Race 11) having absolutely nothing to do with the Race 10 infraction. It is important to note that the two events had nothing at all in common and were in two separate races. Indeed the ruling #051 makes absolutely no reference whatsoever to any infraction except for the alleged infraction in the tenth race.”

Let's count the votes: One, Scott Chaney; he felt the infraction in the tenth race merited three days, not five days. Number two, Steward Grant Baker also believed that the infraction in the tenth race merited three days, not five. Three, Kim Sawyer was the only Steward of the three who felt Petitioner's ride in the tenth race merited five days. However Steward Sawyer had no memory of a single instance where she last imposed five days for a race riding infraction in a single race, in the last five years.

In addition, as part of the film review, the Stewards stated that Appellant was “not found culpable” for the incident in the eleventh race. If he was not culpable in that ride, it should not have been used to justify the two-day suspension enhancement. Finally, we look at the legislative history of 1699. A revised section 1699 (f) went into effect January 1, 2017. It lists two situations for an enhancement, one is a 1699 violation in the last 60 days; and two, the finding that the jockey jeopardized the safety of a horse or rider. There was no such finding in this case. In the absence of an express finding, an enhancement is not justified.

ORDER

Official Ruling DMTC #051, SAC17-0046, dated August 20, 2017, imposing a five-day suspension on appellant, COREY NAKATANI for careless riding under Rule 1699, in the Tenth Race at Del Mar Turf Club on August 19, 2017 is hereby **AFFIRMED**, except that the five-day suspension is **REVERSED** and modified to a three-day suspension.

11/15/17

Dated



STEFFAN IMHOFF
Designated Appellate Judge

DEC 13 AM 10:57

