

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Appeal from the Board
of Stewards Official Ruling #122,
Santa Anita Park, dated March 25, 2018

Case No. SAC 18-0010

DEAN PEDERSON
CHRB License #058838
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 January 25, 2019.

IT IS SO ORDERED ON January 24, 2019.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman



Rick Baedeker
Executive Director

1 Patrick J. Kane, Esq.
2 501 West Broadway, Suite 800
3 San Diego, California 92101
4 Telephone: (858) 381-7860
5 Facsimile: (866) 581-9302
6 Email: pkane@mauricewutscher.com

7
8 **BEFORE THE CALIFORNIA HORSE RACING BOARD**
9 **STATE OF CALIFORNIA**

10 In the Matter of:)	Case No.: SAC 18-0010	
11 Appeal from the Board of Stewards')	PROPOSED DECISION RE: APPEAL	
12 Official Ruling No. 122, Dated March 25,)		OF THE BOARD OF STEWARDS'
13 2018)		OFFICIAL RULING NO. 122, DATED
14 DEAN PEDERSON)	MARCH 25, 2018	
15 CHRB LICENSE NO. 058838)	Hearing Date: October 19, 2018	
16 APPELLANT)	Time: 10:30 a.m.	

17 **I. INTRODUCTION**

18 This matter arises from an appeal of the Board of Stewards' Official Ruling No. 122, Santa
19 Anita Park, dated March 25, 2018 (the "Appeal").

20 Appellant, Dean Pederson ("Appellant") personally appeared and was represented by
21 Steve R. Schwartz, Esq. The California Horse Racing Board ("Respondent" or the "CHRB") was
22 present and represented by Mark Schreiber, Esq.

23 Pursuant to California Horse Racing Board Rule 1414, Hearing Officer Patrick J. Kane
24 ("Officer") presided over this Appeal.

25 This Appeal came for hearing on October 19, 2018 at 10:30 a.m. at Santa Anita Park in
26 Arcadia, California 91007 (the "Hearing"). Michelle Derieg recorded all testimony presented
27 during the Hearing.

28 This matter's evidentiary record closed at the conclusion of the proceeding on October 19,
2018 at approximately 11:10 a.m.

1 **II. EXHIBITS ADMITTED INTO EVIDENCE**

2 **A. Exhibits Entered into Evidence by the CHRB.**

3 The CHRB entered the following exhibits into evidence:

- 4 Exhibit "1" CHRB ORDER DENYING STAY, DATED APRIL 5, 2018;
- 5 Exhibit "2" LETTER FROM STEVE R. SCHWARTZ, REQUESTING A
6 STAY AND APPEAL, DATED MARCH 26, 2018;
- 7 Exhibit "3" STATEMENT OF DECISION AND OFFICIAL RULING NO.
8 122, DATED MARCH 25, 2018;
- 9 Exhibit "4" TRANSCRIPT OF THE PROCEEDINGS, DATED APRIL 6,
10 2017;
- 11 Exhibit "5" TRANSCRIPT OF THE PROCEEDINGS, DATED MAY 23,
12 2017;
- 13 Exhibit "6" RESPONDENT'S PEREMPTORY CHALLENGE, DATED
14 APRIL 6, 2017;
- 15 Exhibit "7" CHRB'S OPPOSITION TO 170.6 MOTIONS, DATED APRIL 6,
16 2017;
- 17 Exhibit "8" CHRB'S COMPLAINT PACKAGE;
- 18 Exhibit "9" CHRB'S HEARING BRIEF, DATED APRIL 6, 2017;
- 19 Exhibit "10" CHRB'S STIPULATED SETTLEMENT, DATED SEPTEMBER
20 1, 2016;
- 21 Exhibit "11" JOINT STATEMENT OF: (1) STIPULATED FACTS; (2)
22 CONTROVERTED ISSUES; AND (3) CONTENTIONS, DATED
23 SEPTEMBER 1, 2016;
- 24 Exhibit "12" LEGISLATIVE HISTORY REGARDING SB1;
- 25 Exhibit "13" CHRB'S CLOSING BRIEF, DATED OCTOBER 19, 2017;
- 26 Exhibit "14" RESPONDENT'S HEARING BRIEF, DATED APRIL 6, 2017;
- 27 Exhibit "15" SECOND HEARING BRIEF, DATED APRIL 6, 2017;
- 28 Exhibit "16" STOKES V. CAL. HORSE RACING BOARD;

- 1 Exhibit "17" RESPONDENT'S HEARING BRIEF ON THE LAW OF
2 STATUTORY INTERPRETATION, DATED MAY 17, 2017;
3 Exhibit "18" RESPONDENT'S CLOSING ARGUMENT BRIEF, DATED
4 OCTOBER 31, 2017; AND
5 Exhibit "19" CHRB'S APPELLANT BRIEF, DATED OCTOBER 18, 2018.

6 **B. Exhibits Entered into Evidence by Appellant.**

7 Appellant entered the following exhibits into evidence:

- 8 Exhibit "20" RESPONDENT'S APPELLANT BRIEF, DATED OCTOBER 18,
9 2018;
10 Exhibit "21" BOARD OF STEWARDS' MINUTES FOR JULY 8, 2016
11 THROUGH JULY 10, 2016; AND
12 Exhibit "22" BOARD OF STEWARDS' MINUTES FOR JULY 20, 2016
13 THROUGH JULY 24, 2016.

14 **III. LIST OF TESTIFYING WITNESSES**

15 **A. Witnesses Testifying on Behalf of Appellant.**

16 Appellant called the following the witnesses:

- 17 • Dean Pederson.

18 **B. Witnesses Testifying on Behalf of the CHRB.**

19 The CHRB did not call any witnesses on its behalf.

20 **IV. FACTUAL FINDINGS**

21 After admitting all exhibits and testimony into evidence, this Officer makes the following
22 findings of fact:

23 **A. Background.**

24 **I.**

25 At all times relevant to this Appeal, Appellant was the trainer of record for racehorse Go
26 First ("Go First" or the "Horse") who was stabled at Los Alamitos Race Course ("Los Alamitos").
27 (Ex. 3 at p. 2, Ex 5 at p. 69.) On or about April 22, 2015, Appellant entered Go First in the fourth
28 race at Santa Anita to be run on April 25, 2015 (the "Race"). (Ex. 3 at p. 2, Ex 5 at p. 68.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II.

Because Appellant's stable was based at Los Alamitos and Go-First was entered in a race at Santa Anita, Appellant contacted Miguel Delgado ("Delgado"), assistant trainer for Julio Canani ("Canani") who was stabled at Santa Anita, to make arrangements to stable Go-First at Canani's barn the day before the Horse would run in the Race. (Ex. 5 at p. 69-70.)

III.

Appellant arranged with KC Horse Transport ("KC" or "KC Transport") to transport Go First from Los Alamitos to Santa Anita. (Id. at 69-70, 73.) Appellant was not present at his Los Alamitos' stable when KC loaded Go First onto the horse trailer. (Id. at p. 75.)

IV.

On April 24, 2015, KC transported Go First from Appellant's Los Alamitos stable to Canani's Santa Anita stable. (Ex. 3 at p. 2-3.) None of Appellant's employees accompanied Go-First while the Horse was transported to Santa Anita. (Ex. 5 at p. 76.)

V.

Go First arrived at Santa Anita on April 24, 2015. (Ex. 3 at p. 3.) When KC arrived at Santa Anita, Go First was confused with a filly named Papa's Lass who arrived with Go First on the same horse trailer. (Ex. 3 at p. 3, Ex. 5 at p. 54-55.) Specifically, KC employees, mistaking Go First to be Papa's Lass, deposited Go First with Papa's Lass' trainer Martin Jones ("Jones"). (Ex. 3 at p. 3.) Conversely, Papa's Lass was incorrectly deposited into Canani's stables. (Ex. 3 at p. 3, Ex. 5 at p. 58.) None of Jones' employees attempted to positively identify Go First at any point on April 24, 2015. (Ex. 5 at p. 56.)

VI.

Still mistakenly believing Go First to be Papa's Lass, on the morning of April 25, 2015, Jones' assistant trainer took Go First to the racetrack for "training." (Ex. 5 at p. 58.) Jones' employees subsequently administered Go First with Acepromazine despite being unaware of the Horse's true identity. (Id.) Later that morning, Jones contacted his assistant trainer to ask about Papa's Lass' condition. (Id. at p. 57.) During this conversation, Jones' assistant trainer realized Papa's Lass was actually Go First and that both horses had been mistakenly identified. (Id.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VII.

Upon determining they had the incorrect horse, Jones' employees contacted KC to ask what other horses were transported on the April 24, 2015 horse trailer. (Ex. 5 at p. 58.) KC informed Jones' employees that Go First was the only other horse on the horse trailer that day. (Id.) Jones' employees next contacted Appellant to inform him that: (1) Go First was improperly delivered to Jones' stables; (2) Jones' employees mistakenly believed Go First to be Papa's Lass; and (3) due to the mistaken identity, Go First had been administered Acepromazine. (Id. at p. 64.)

VIII.

After learning of Go First's mistakenly identity, Appellant contacted the Board of Stewards ("Stewards") to explain the mistaken identity situation on April 25, 2015. (Ex. 3 at p. 3.) Appellant explained that due to Go First being mistaken for Papa's Lass, Go First received non-permissible race-day medication. (Id.) Therefore, the Stewards "scratched" Go First from the Race. (Id.)

IX.

The Stewards proceeded to refer the matter to the CHRB for investigation. (Ex. 10 at p. 2.) After its investigation, the CHRB filed a Complaint ("2015 Complaint") against Appellant, Case No. 15SA169, alleging Appellant violated Cal. Code Regs. Tit. 4 §§ 1629 ("Section 1629") and 1894 ("Section 1894"). (Id.)

B. Procedural History.

X.

On or about June 20, 2015, the Stewards held a formal hearing on the 2015 Complaint. (Ex. 10 at p. 2.) On September 7, 2015, the Stewards issued Official Ruling No. 088 ("2015 Ruling") which: (1) found Appellant violated Section 1629 (Penalty for Late Declaration-Third Party Medication Error Causing a Horse to be Scratched from the Fourth Race on April 25, 2015 at Santa Anita) and imposed a \$400.00 fine against Appellant. (Id. at p. 3.)

XI.

On or about September 9, 2015, Appellant appealed the 2015 Ruling and requested that

1 the Office of Administrative Hearings (the "2105 Appeal") hear the appeal. (Ex. 10 at p. 3.)
2 Appellant further requested that the \$400.00 fine the 2015 Ruling imposed be stayed, which the
3 CHRB granted on September 9, 2015. (Id.)

4 **XII.**

5 On September 1, 2016, Appellant and the CHRB entered into a stipulated settlement
6 concerning the 2015 Ruling and the 2015 Appeal (the "Stipulated Settlement"). Specifically, the
7 parties stipulated that: (1) Appellant would dismiss the 2015 Appeal filed with the Office of
8 Administrative Hearings; (2) the CHRB would set aside the 2015 Ruling; and (3) Appellant was
9 entitled to a separate *de novo* hearing conducted by the Stewards as to the 2015 Complaint. (Ex.
10 10 at p. 3.)

11 **XIII.**

12 Pursuant to the Stipulated Settlement, on or about January 27, 2017, the CHRB filed a
13 new Complaint (the "2017 Complaint") against Appellant for supposed violations of Cal. Code
14 Regs. Tit. 4 §§ 1629 and 1887 ("Section 1887") based upon the following:

15 On April 25, 2015, the Horse "Go First" trained by Dean Pederson was entered in
16 the fourth race at Santa Anita Race Track. The horse "Go First" was shipped from
17 Los Alamitos Race Course to Santa Anita Race Track on April 24, 2015. KC Horse
18 Transport transported two horses from Los Alamitos Race Course to Santa Anita.
19 Besides "Go First," there was a Martin Jones horse "Papa's Lass." Apparently,
20 "Go First" went to Martin Jones' barn by mistake and was administered
21 "Acepromazine" on April 24, 2015, the day before the race. "Go First" was
22 subsequently scratched from the race (hereinafter referred to as the "Conduct").
(Ex. 8.)

23 The 2017 Complaint scheduled an April 6, 2017 *de novo* hearing in front of the Stewards
24 (the "2017 Hearing"). (Ex. 8.)

25 **XIV.**

26 On April 6, 2017, the 2017 Hearing was held at Santa Anita Race Track. (Ex. 4 at p. 5.)
27 The following individuals were present: (1) Appellant; (2) Appellant's counsel of record, Steve
28 Schwartz; (3) Stewards, Scott Chaney, Kim Sawyer, and Grant Baker; (4) CHRB's counsel of
record, Venessa Martinez; and (5) the CHRB's representative, Sharyn Jolly. (Id.) Due to time
constraints, the 2017 Hearing concluded at 12:30 p.m. on April 6, 2017 and its conclusion
continued to May 23, 2017. (Id. at p. 65, Ex. 5.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

XV.

On May 23, 2017, the 2017 Hearing resumed at Santa Anita Race Track. (Ex. 5. at p. 5.) The following individuals were present: (1) Appellant; (2) Appellant's counsel of record, Steve Schwartz; (3) Stewards, Scott Chaney, Kim Sawyer, and Grant Baker; (4) CHRB's counsel of record, Venessa Martinez; (5) CHRB's staff counsel, Phillip Laird; and (5) CHRB investigator, Jim Hamilton. (Id.)

After all presented exhibits and testimony were entered into evidence, the 2017 Hearing concluded on May 23, 2017 at 12:10 p.m. (Ex. 5 at p. 88.) However, the 2017 Hearing's record remained open until October 31, 2017 so that the parties could submit written closing briefs. (Ex. 3 at p. 1.)

XVI.

On March 25, 2018, the Stewards issued Official Ruling LATS No. 122 (the "Ruling"), unanimously holding that:

Trainer DEAN PEDERSON is fined FOUR HUNDRED DOLLARS (\$400.00) for violation of California Horse Racing Board Rules No. 1887 (Trainer or Owner to Insure Condition of Horse) and No. 1629 (Penalty for Late Declaration) which caused his horse to be scratched from the fourth race on April 25, 2015 at Santa Anita Park. (See Ex. 3.)

In support of the Ruling, the Stewards issued a Statement of Decision finding that: (1) Section 1887 applies to a horse entered in a race and Go First was entered in the Race; (2) Appellant did not make every "reasonable effort to protect the horses in his care from tampering by unauthorized persons"; and (3) Appellant "is not absolved of his obligation to start the horse simply because the proximate cause were acts of third parties." (Ex. 3 at p. 5.)

XVII.

On March 26, 2018, Appellant timely filed a "Notice of Appeal" with the CHRB and simultaneously sought a stay of the Ruling's \$400.00 fine. (Ex. 2.) Appellant argued the Ruling was should be overturned for the following reasons:

(1) The stewards mistakenly interpreted various laws including California Supreme Court precedent, laws of evidence and ignored the CHRB's own published guidelines for the conduct of steward's hearings.; (2) Appellant's constitutional right to due process under the United States Constitution and the California Constitution were violated by the California Horse Racing Board and its Stewards.;

1 (3) The Stewards, in particular Grant Baker, had undisclosed conflicts of interest at
2 the time of the hearing which made it impossible for him to be a neutral trier of
3 fact. His wife Rita is employed by the CHRB as Rick Beaderker's secretary.; (4)
4 The Stewards misinterpreted and improperly analyzed the trainer insurer rule as
5 applicable to this case when it is not.; (5) The Stewards are prejudiced against
6 Appellant and his undersigned counsel.; (6) Appellant's horse did not race, and thus
7 the trainer insurer rule cannot apply as a matter of law.; (7) The Stewards
8 misinterpreted the law concerning the admissibility of Appellant's designated
9 expert witness.; (8) There was no violation of any CHRB rule in this case as there
10 is no rule requiring trainers to send attendants with their horses on van rides
11 between tracks.; and (9) The Ruling is arbitrary, capricious, and not supported by
12 substantial evidence within the record. (Ex. 2.)

13 Irrelevant to this Appeal are Nos. 2, 3, and 5 as Appellant failed to submit any argument
14 or evidentiary support for the above arguments. Thus, Appellant waived said arguments. (See
15 e.g. *Orange County Water Dist. v. Sabic Innovative Plastics US, LLC* (2017) 14 Cal. App. 5th
16 343, 383 ["When an appellant fails to raise a point, or asserts it but fails to support it with reasoned
17 argument and citations to authority, we treat the point as waived."].)

18 Moreover, Appellant stipulated to and attended the de novo hearing in front of the
19 Stewards, and now cannot complain about the Stewards overseeing the 2017 Hearing. (Ex. 10.)

20 XVIII.

21 In October 2018, Appellant requested that this Hearing Officer recuse himself from the
22 hearing this Appeal premised upon apparent conflicts of interest. On October 17, 2018, this
23 Officer denied Appellant's request.

24 V. ISSUES ON APPEAL AND CONTROLLING LAW

25 Business and Professions Code Section 19517(a) provides the overall framework of the
26 Appeal, and states, in relevant part, that:

27 The board, upon due consideration, may overrule any steward's decision...if a
28 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.

"Preponderance of the evidence means evidence that has more convincing force than that
opposed to it." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 324.) "Preponderance
of the evidence means what it says, viz., that the evidence on one side outweighs, preponderates
over, is more than, the evidence on the other side, *not necessarily in number of witnesses or*
quantity, but in its effect on those to whom it is addressed." (*Glage v. Hawes Firearms Co.* (1990)

1 226 Cal.App.3d 314, 325 [citations omitted].)

2 Appellant has the burden of proving facts necessary to sustain the appeal. (See, Cal. Code
3 Regs. Tit. 4 § 1764 [“The burden shall be on the appellant to prove the facts necessary to sustain
4 the appeal.”].)

5 The parties essentially agree that the major issue on Appeal is whether the Stewards
6 correctly applied horseracing law. Because this Appeal concerns whether the Stewards
7 mistakenly interpreted the law, this Officer applies the preponderance of the evidence standard of
8 review.

9 VI. DISCUSSION

10 A. Dr. Bell does not as an Expert Witness and his Testimony is therefore Stricken.

11 Initially, Appellant argues the Stewards committed an error of law in determining that Dr.
12 Boyd William Bell (“Dr. Bell”) did not qualify as an expert witness. Specifically, Appellant
13 claims that Dr. Bell’s testimony should have been admitted pursuant to Cal. Evid. Code § 720.
14 (Ex. 21 at p. 7.) Unfortunately, Appellant is mistaken.

15 “A person is qualified to testify as an expert if he has special knowledge, skill, experience,
16 training, or education sufficient to qualify him as an expert on the subject to which his testimony
17 relates.” (*People v. Montes* (2014) 58 Cal. 4th 809, 861, quoting Cal. Evid. Code § 720(a).)
18 “According to Evidence Code section 801, subdivision (a), expert opinion testimony must be
19 related to a subject that is sufficiently beyond common experience that the opinion of an expert
20 would assist the trier of fact.” (*People v. Singh* (1995) 37 Cal. App. 4th 1343, 1377 [internal
21 quotations omitted].) “[A] person is qualified to testify as an expert if he has special knowledge,
22 skill, experience, training or education sufficient to qualify him as an expert on the subject to
23 which his testimony relates.” (Id.) “Whether a person qualifies as an expert in a particular case,
24 however, depends upon the facts of the case and the witness's qualifications.” (Id.)

25 Dr. Bell graduated from Colorado State, Fort Collins, Veterinary School in 1967 with a
26 D.V.M. and spent 22 years thereafter as a private veterinarian at racetracks located in Los Angeles
27 County and Orange County. (Ex. 4 at p. 34.) Dr. Bell then became a regulatory veterinarian with
28 the CHRB in August 1989 until his retirement. (Id. at p. 34-35.) Appellant presented Dr. Bell as

1 a supposed expert concerning: (1) the “trainer insurer rule” as codified by Section 1887; and (2)
2 a trainer’s best practices when a horse arrives at a trainer’s barn. (Id. at 36-38.)

3 However, Dr. Bell: (1) has no legal background qualifying him to provide testimony as to
4 the duty of care imposed to a trainer under applicable California law; (2) could not recall ever
5 testifying about the trainer insurer rule; and (3) expert qualifications relate solely to veterinary
6 practices, which are not at issue in this Appeal. (Id. at p. 36-45.)

7 Because Appellant failed to qualify Dr. Bell as an expert concerning the issues relevant to
8 this Appeal, Dr. Bell’s testimony unrelated to veterinary practices is stricken. (See e.g., *People*
9 *v. Pearson* (2103) 56 Cal. 4th 393 [“Because [the expert’s] competence to testify on this particular
10 subject was not established, the trial court erred in admitting his testimony to the extent he opined
11 defendant’s premature fossae did not affect his behavior.”].)

12 Accordingly, Dr. Bell’s testimony during the April 6, 2017 Hearing is stricken in
13 accordance with the above.

14 **B. The Stewards Correctly Applied Section 1887.**

15 Next, Appellant argues the Stewards mistakenly interpreted the law in determining that
16 Section 1887 applied to this Appeal. Specifically, Appellant, citing *Sandstrom v. California*
17 *Horse Racing Board* (1948) 31. Cal.2d 401 (“*Sandstrom*”), contends that the following four
18 requirements must be met in order for Section 1887 to apply: (1) a horse is entered in a race; (2)
19 the subject horse runs in said race; (3) the chemical or other analysis of a post-race urine or blood
20 sample shows the presence of a prohibited drug substance; and (4) the trainer must be notified of
21 a potential positive test within twenty-one days from when the sample was taken. (Ex. 20 p. 4.)

22 Section 1887 states in pertinent part

23 (a) The trainer is the absolute insurer of and responsible for the condition of the
24 horses entered in a race, regardless of the acts of third parties, except as otherwise
25 provided in this article. If the chemical or other analysis of urine or blood test
26 samples or other tests, prove positive showing the presence of any prohibited drug
27 substance defined in Rule 1843.1 of this division, the trainer of the horse may be
28 fined, his/her license suspended or revoked, or be ruled off. In addition, the owner
of the horse, foreman in charge of the horse, groom, and any other person shown to
have had the care or attendance of the horse, may be fined, his/her license
suspended, revoked, or be ruled off. The owner of a ship-in horse is the joint-
absolute insurer of and is equally responsible for the condition of the horse entered
in a race.

1 (c) Notwithstanding the above, if the Board or its agents fail to notify a trainer or
2 the owner of a ship-in horse of a potential positive test within 21 calendar days from
3 the date the sample was taken, the trainer or the owner of a ship-in horse shall not
4 be deemed responsible under this section unless it is shown by the preponderance
of the evidence that the trainer or the owner of a ship-in horse administered the drug
or other prohibited substance defined in Rule 1843.1 of this division, caused the
administration or had knowledge of the administration.

5 In *Sandstrom*, the California Supreme Court upheld the constitutionality of the absolute
6 trainer insurer rule codified in Section 1887. (*Sandstrom*, supra, 31 Cal. at 412. The Court further
7 held the following two requirements must be met to impose liability under Section 1887's
8 predecessor, Rule 313 (tit. 4, Cal. Adm. Code, § 1930): (1) the licensee must be the trainer of the
9 horse; and (2) the analysis must show the presence of a stimulating or depressive drug or chemical.
10 (Id. at 405.)

11 Here, both *Sandstrom* requirements are present as it is undisputed that: (1) Appellant was
12 Go First's trainer of record at all times relevant to this Appeal; and (2) Go First was administered
13 Acepromazine the morning of the Race.

14 While acknowledging no analysis of Go First's urine or blood was taken to determine the
15 presence of Acepromazine, this Hearing Officer finds there was no reason for such a sample as it
16 is undisputed that Go First was administered an illegal race-day medication by Jones' employees
17 on April 25, 2015. In fact, had the CHRB taken a blood and/or urine sample from Go First
18 evidencing the Acepromazine administration, Appellant would have faced a minimum suspension
19 of thirty-days and a fine of at least \$500.00. (See Ex. 3, at p. 5.)

20 Nor does this Hearing Officer find Appellant's argument that Go First was required to run
21 in the Race for Section 1887 to apply. Indeed, Section 1887 provides no "race" requirement, but
22 rather simply requires "a horse be entered to run in a race." (See Cal. Code Regs. Tit. 4 § 1887(a)
23 ["The trainer is the absolute insurer of and responsible for the condition of the horses entered in
24 a race."].) Nor does *Sandstrom* provide a horse race in order for Section 1887 to apply as
25 Appellant wrongly contends. Because it is clear that Go First was entered the Race, this Officer
26 rejects Appellant's argument to the contrary as a matter of law.

27 Accordingly, the Stewards did not commit a mistake of law in determining that: (1)
28 Section 1887 applied to the instant action; and (2) Appellant violated Section 1887.

1 **B. Section 1888 does not Absolve Appellant.**

2 Appellant next argues that even if Section 1887 applied to this Appeal, Cal. Code Regs.
3 Tit. 4 § 1888 (“Section 1888”) provides Appellant with a complete defense to any supposed
4 Section 1887 violation. Section 1888 provides in pertinent part that:

5 A trainer or other person charged with a violation of Rule 1887 of this division may
6 defend, mitigate or appeal the charge if: (c) [h]e shows, by a preponderance of
7 evidence, that he made every reasonable effort to protect the horses in his care from
tampering by unauthorized persons. (Cal. Code Regs. Tit. 4 § 1888(c).)

8 Specifically, Appellant argues his supposed violation of Section 1887 should be dismissed
9 as Appellant made every reasonable effort to ensure Go First was not tampered with by authorized
10 persons. Rather, Appellant contends the negligent actions of KC Transport and Jones’ employees
11 caused the Section 1887 violation, neither of whom acted as Appellant’s agents. However,
12 Appellant’s argument is unpersuasive.

13 Initially, the record is clear that Appellant failed to made every reasonable effort to protect
14 Go First from unauthorized persons. Indeed: (1) Appellant did not provide written instructions
15 to KC Transport as to where Go First was to be stabled; (2) Appellant was not present when Go
16 First was placed onto the KC Transport vehicle; (3) Appellant was not present at Santa Anita
17 when Go First arrived; (4) Appellant neither contacted KC Transport or Delgado to determine if
18 Go First arrived safely at Canini’s Santa Anita stable; and (5) Go First’s “Santa Anita arrival slip”
19 indicates that KC Transport was instructed by Appellant or his employees to transport Go First to
20 Mike Puype’s barn, as opposed to Canini’s Santa Anita Barn. (See generally, Exs. 4 and 8.)

21 In fact, Appellant testified that he believes he was at home when Go First was picked up
22 and transported to Santa Anita. (Ex. 5 at p. 75.) Had Appellant contacted Delgado on April 24,
23 2015 to ensure Go First safely arrived at Canini’s stable, then he could have remedied this
24 situation before Go First received a non-race-day medication.

25 Moreover, Appellant continually argues that Jones’ employees, who Appellant had no
26 responsibility over, did not follow the conventional procedure of identifying Go First when he
27 first entered Jones’ stable. However, Appellant ignores the crucial fact that neither Delgado or
28 any of Canini’s employees, all of whom Appellant entrusted the care of Go First to, identified

1 Papa's Lass upon her arrival at Canini's Santa Anita stable. It cannot be disputed that Delgado
2 was acting as Appellant's agent in overseeing Go First before his start in the Race. Had Delgado
3 followed this same procedure Appellant complains that Jones' employees should have followed,
4 then it would have immediately become clear that Papas Lass had been mistaken for Go First.

5 Simply put, Appellant cannot point the finger at Jones' employees for failing to follow
6 procedure when the employees whom Appellant entrusted Go First with failed to follow that same
7 procedure, which substantially contributed to Go First being mistakenly identified. (See e.g.,
8 *Stokes v. Cal. Horse Racing Bd.* (2002) 98 Cal. App. 4th 477, 482 ["A trainer cannot disclaim
9 responsibility for the performance of his duties merely because he assigns a task to another--
10 whether a brother, an employee, or anyone else--who fails to properly perform the task. An
11 innocent principal or employer is liable for the torts committed by an agent or employee while
12 acting within the scope of the agency or employment, even if the agent or employee acts in excess
13 of the authority or contrary to instructions."].) Appellant's argument is unpersuasive for this
14 reason also.

15 Finally, to the extent Appellant argues that the negligence of KC and Jones' employees
16 was a superseding cause, it too is unpersuasive because Appellant's failure to ensure Go First
17 safely arrived at Santa Anita was substantial factor in causing the Conduct. (See e.g., *Torres v.*
18 *Xomox Corp.* (1996) 49 Cal. App. 4th 1, 18-19 ["In other words, the defendant may be liable if
19 his conduct was 'a substantial factor' in bringing about the harm, though he neither foresaw nor
20 should have foreseen the extent of the harm or the manner in which it occurred. It must appear
21 that the intervening act has produced harm of a kind and degree so far beyond the risk the original
22 tortfeasor should have foreseen that the law deems it unfair to hold him responsible."].)

23 Accordingly, the Stewards did not commit a mistake of law in determining that Appellant
24 failed to meet his burden of proof required by Section 1888.

25 **C. The Stewards Correctly Determined that Appellant Violated Section 1629.**

26 Finally, Appellant argues that the Stewards mistakenly applied Section 1629, which states
27 that "[a]ny person responsible for the failure of any horse to start in a race when the starting of
28 such horse is obligatory may be disciplined by the stewards." (Cal. Code Regs. Tit. 4 § 1629.)

1 Specifically, Appellant argues the Stewards incorrectly applied Section 1629 because: (1)
2 KC Transport confused Go First and Papa's Lass; (2) Jones' employees failed to identify Go First
3 upon his arrival at Jones' barn; and (3) Jones' employees administered a Class Three Drug without
4 positively identifying Go First. (See Ex. 20 at p. 10.)

5 However, for the reasons stated above, each of Appellant's arguments fail, and thus the
6 Stewards properly exercised their discretion in disciplining Appellant pursuant to Section 1629.
7 (See e.g., *People v. Fuiava* (2012) 53 Cal.4th 622, 650 ["Discretion is abused only when the court
8 exceeds the bounds of reason, all circumstances being considered."].)

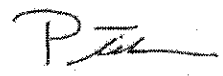
9 Accordingly, the Stewards did not commit a mistake of law in determining that Appellant
10 violated Section 1629.

11 **VII. CONCLUSION**

12 Because the Stewards correctly interpreted the law, Appellant did not meet his burden of
13 proof necessary to grant his Appeal, and thus this Appeal should be denied.

14 WHEREFORE, it hereby recommended that Appellant's Appeal of SAC 18-0010 be
15 overruled, and that Appellant be ordered to comply with Official Ruling LATS No. 122.

16 Dated: January 13, 2019



Patrick J. Kane, Esq.
Hearing Officer
501 West Broadway, Suite 800
San Diego, California 92101
Telephone: (858) 381-7860
Facsimile: (866) 581-9302
Email: pkane@mauricewutscher.com

2019 JAN 14 AM 7:45
RECEIVED
CHRB