

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:
FITNESS FOR LICENSURE

TOMAS URBINA, JR.
Appellant

Case No. SAC 13-0049

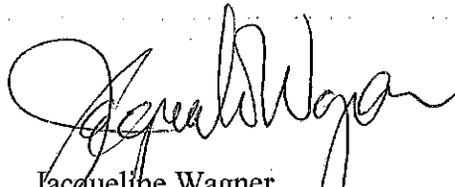
DECISION

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 21, 2014.

IT IS SO ORDERED ON January 16, 2014.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman


Jacqueline Wagner
Assistant Executive Director

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TOMAS URBINA, JR.)
Appellant)
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PROPOSED DECISION

This matter was heard on October 21, 2013 by C. Scott Chaney, a Hearing Officer designated under California Horse Racing Board rule 1414 (Appointment of Referee) at Santa Anita Race Track in Arcadia, CA.

The Appellant, formerly licensed exercise rider Tomas Urbina Jr. (hereinafter “Appellant” or “Mr. Urbina”), represented himself.

The California Horse Racing Board (hereinafter “CHRB”) was represented by CHRB Investigator Rick Amieva.

Also present at the hearing were witnesses on the behalf of the Appellant –his mother Antonia Urbina and owner Natalie Kaufmann. The proceedings were recorded by Michelle Dereig.

PROCEDURAL BACKGROUND

On January 13, 2013, Appellant applied for a CHRB license in the license category of exercise rider. His was previously licensed as an exercise rider, however, that license expired in November of 2012. On the license application in January 2013, he truthfully answered “yes” to the following question: “[h]ave you ever been convicted of an offense by a court?” Mr. Urbina indicated to CHRB Investigator Rick Amieva and also noted on his application that he had been convicted of the crime of unlawful sexual intercourse with a minor, which is a felony. After serving approximately 6 months in county jail, Appellant was released and placed on formal felony probation from March 16, 2012 to March 16, 2017. On the day of the license application, the CHRB issued a document entitled “Notice of Refusal of License” to Mr. Urbina. That document stated the reason for the denial of a CHRB license: “You have been convicted of a crime punishable by imprisonment in the State or Federal prison, or have been convicted of a crime involving more turpitude.” This refusal is not discretionary pursuant to CHRB Directive 01-09 which establishes a CHRB Investigator’s authority to approve licenses

for individuals with criminal histories. Mr. Urbina then appealed the denial and requested a formal fitness for licensure hearing. Both parties were noticed and the hearing was scheduled for October 21, 2013. On that day, the hearing was called to order at approximately 8:30 am in accordance with the notice supplied to all parties. The CHRB submitted documentary evidence relevant to the matter, while the Appellant presented oral testimony in the form of witnesses, including himself, as well as documentary evidence. The record was closed and the matter deemed submitted that same morning.

LIST OF EXHIBITS

CHRB Exhibit #1 – CHRB packet containing several different documents pertaining to this hearing: Notice of Hearing, Notice of Refusal of License, Declaration of service by certified and first class, and a declaration appeal request by Appellant.

CHRB Exhibit #2 -- California Horse Racing Board Directive 01-09 “License Refusals and Denials,” dated January 6, 2009.

Appellant Exhibit #1 – Appellant packet containing several different documents pertaining to this hearing: Letter from owner Natalie Kaufmann, letter from jockey Mario Gutierrez, letter from trainer Craig Dollase, letter from counselor Charles Glenn, letter from Probation Officer Danielle Carrier, letter from Sex Offender Tracking Program Manager Tina Farales, letter from trainer John Sadler, and a letter from trainer Doug O’Neill.

FACTUAL FINDINGS

I

Exercise rider Tomas Urbina Jr. is 29 years old and has held a California Horse Racing Board license in some capacity from 2002 until November 2012 when his exercise rider’s license expired.

II

In 2011, Mr. Urbina pled nolo contendere and was therefore convicted of California Penal Code 261.5(D) – unlawful sexual intercourse with a minor, which is a felony. He served six months in county jail and upon release was placed on probation for a term of five years – from March 15, 2012 to March 15, 2017.

III

Evidence indicated that the conviction stemmed from a relationship that he was involved in when he was 21 and his then girlfriend was 16.

IV

The Sex Offender Tracking Program of the California Justice Department has determined that Appellant is not required to register as a sex offender in the State of California.

V

Mr. Urbina will be discharged from probation on March 15, 2017.

VI

On January 13, 2013, Mr. Urbina applied for an exercise rider's license from the CHRB. On that same date, in accordance with the CHRB Rules and Regulations, and pursuant to a CHRB directive on these matters, Mr. Urbina was refused a license due to his felony conviction and the fact that he is currently on probation for said felony.

VII

Mr. Urbina appealed the denial and that appeal is being heard here.

APPLICABLE LAWS AND REGULATIONS

California Horse Racing Board Directive 01-09 "License Refusals and Denials," dated January 6, 2009.

A license applicant *will not* be considered for licensing and will be refused or denied a license based on the following minimum criteria:

...

b. Felony Convictions (except as noted above subsection "a"): A license applicant is not eligible for licensing for a term of (5) years following the termination of the parole and/or probation of the felony conviction.

...

The Investigative Staff has no discretionary authority to approve a license if the applicant does not meet the aforementioned time lines relative to disqualifying criminal convictions. . .

California Horse Racing Board Rule 1489 (Grounds for Denial or Refusal of License).

The Board, in addition to any other valid reason, may refuse to issue a license or deny a license to any person:

(a) Who has been convicted of a crime punishable by imprisonment in a California state prison or a federal prison, or who has been convicted of a crime involving moral turpitude.

DISCUSSION OF ISSUES

The issue in this matter is whether the terms of CHRB Directive 01-09 should be waived with respect to Mr. Urbina's conviction and whether CHRB Rule 1489 should be applied. As an initial matter, the CHRB investigative staff appropriately applied the conditions set forth in Directive 01-09 and CHRB Rule 1489 in denying Mr. Urbina's license application based on his felony conviction and current probation. Directive 01-09 is very specific in restricting the ability for the CHRB investigators to grant licenses under these circumstances. It is clearly intended to require that license applicants with recent criminal history be subjected to more scrutiny (and by extension, more due process) than an individual investigator's assessment as to whether these individuals would be good candidates for licensure. That additional scrutiny is the purpose of this hearing. In fact, should the directive be applied strictly, Appellant would not be eligible for a CHRB license until March 2022 (five years after felony probation has terminated). Furthermore, the CHRB investigative staff applied CHRB 1489 well within its scope. To wit, the CHRB "may" refuse a license to Appellant because he has been convicted of a felony and has been convicted of a crime involving moral turpitude.

As this hearing officer has acknowledged in previous proposed decisions in this area, the CHRB clearly has an interest in withholding licenses from certain individuals in order to regulate the industry in a way that promotes fairness, integrity and safety. For example, individuals who do not possess the requisite skills are precluded from procuring trainers' licenses; individuals not employed by associations are prevented from acquiring racing official or valet licenses; and more to the point, those who have been convicted of crimes related to bookmaking cannot be licensed by the CHRB. It is this concern with criminal history and its potential deleterious effect that led to the promulgation of Directive 01-09. Its application, however, is less clear. As stated earlier, the CHRB would certainly not want to license a convicted bookmaker or race fixer, but probably has no interest in barring individuals with minor traffic infractions. The gray area of criminal convictions between these two extremes is more difficult, but is guided by the conditions set forth in the Directive. Applied strictly in this case, Mr. Urbina would be precluded from applying for a license until March 15, 2022 (five years after the discharge from his probation). It is the purpose of this hearing to determine if the evidence indicates that a waiver of all or part of the time that Mr. Urbina is precluded from applying for a CHRB license is appropriate.

A review of Appellant's history and the evidence presented at hearing seems relevant here. Appellant is candid in explaining and regretting his crime. He testified on his own behalf. He explained that he should be eligible for a CHRB license for the following reasons: (1) he admitted his mistake; (2) he was expressed contrition for the crimes; (3) he has served almost two years of probation; (4) he has held a horse racing license for a number of years; (5) his license history is otherwise unremarkable; (6) he believes his holding a license is not a danger to the horse racing industry; and (7) Appellant also presented several written character declarations as well as called two character witnesses. Appellant called owner Natalie Kaufmann who testified to his good character and horsemanship. She also testified that he is a good father to his young daughter and a credit to the horse racing industry. Appellant's mother also testified on behalf of her son and explained that he is a loving father and has already suffered for his

mistake. Notably, in this case Mr. Urbina has the support of industry horsemen as well. Prominent trainers John Sadler, Doug O'Neill, and Craig Dollase wrote letters of support as well as Kentucky Derby winning jockey Mario Gutierrez.

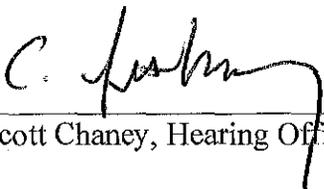
This case is somewhat different from the drug or alcohol related convictions that seem to predominate this type of hearing. Those matters are different in the sense that there is typically evidence of sobriety and rehabilitation. In the instant case, there is some evidence of rehabilitation through Appellant's participation in the Sex Offender Relapse Prevention Therapy counseling program as required by the terms of his probation. In some ways, the drug and alcohol convictions seem more threatening to the horse racing industry than Mr. Urbina's crime in terms of their potential negative impact. His crime was not violent and doesn't appear to be a habitual problem nor does it portend any degree of recidivism. On the other hand, his crime is a felony and certainly falls into the crimes of moral turpitude category as described in the CHRB Rules and Regulations.

Ultimately, these types of cases are risk/benefit analyses with respect to whether this is the type of individual that the CHRB should license given their criminal past and potential future. On the one hand, Appellant's crime is serious, and should have consequences; on the other hand, Appellant displayed regret for his crime and has paid a penalty in terms of incarceration and probation (and its requirements). What is particularly persuasive to this hearing officer is the breadth and amount of industry support that Mr. Urbina enjoys. Appellant submitted letters from prominent owners, trainers and jockeys that forcefully advocate for his participation in the industry. While this is not the only consideration in determining whether Mr. Urbina should have a license, it is highly probative and ultimately tips the scales in his favor in the instant matter.

CONCLUSION/PROPOSED DECISION

Given all of the foregoing, it is recommended that Tomas Urbina Jr. be permitted to apply and be eligible for a California Horse Racing Board license in the license category of exercise rider or pony rider. The following conditions should be applied to any license Mr. Urbina holds for as long as he holds it: (1) Mr. Urbina successfully completes and abides by the terms of his court supervised probation and (2) Mr. Urbina not be convicted of any other crime (excluding moving violations) or violate significant CHRB Rules or Regulations.

DATED: January 6, 2013.



C. Scott Chaney, Hearing Officer