

BEFORE THE
CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

In the Matter of:)	
)	
California Horse Racing Board)	
v.)	Case No. 14SA225
)	
JULIEN COUTON,)	
Jockey)	
_____)	

STATEMENT OF DECISION

PROCEDURAL BACKGROUND

The California Horse Racing Board (hereinafter “CHRB” or “Complainant”) filed a complaint against jockey Julien Couton (hereinafter “Mr. Couton” or “Respondent”) alleging violation of CHRB rules 1902 (Conduct Detrimental to Racing) and 1900 (Grounds for Suspension or Revocation). The complaint alleged that Mr. Couton was arrested and held to answer in a domestic violence incident with his girlfriend, who is also a CHRB licensee. The incident was alleged to have taken place off of racing association grounds. Present at the hearing were this Board (Scott Chaney, Kim Sawyer, and Tom Ward), the Respondent Julien Couton with his attorney Seth Weinstein, Deputy Attorney Robert Petersen representing the CHRB, and CHRB Supervising Investigator Rick Amieva. Court reporter Michelle Derieg recorded the proceedings. The formal hearing took place on three dates: April 3, 2015, April 12, 2015, and May 11, 2015. On those three days we took documentary testimony and heard oral testimony from the following witnesses: Respondent, jockey Brice Blanc, valet Michel Poincelet, police officer Henry Wong, CHRB Supervising Investigator Rick Amieva, and Kathy Branick. There was also a surveillance video that was viewed. All documents and the video were appropriately marked and entered into evidence. It should be noted that, in order to protect her privacy, the alleged victim in this case was referred to as Cassandra B. (hereinafter “Cassandra B.” or “the alleged victim” throughout the proceedings. Closing briefs were submitted by both parties on or before June 19, 2015 and the matter was taken under consideration.

LIST OF EXHIBITS

CHRB Exhibit A CHRB Complaint

- CHRB Exhibit B* CHRB Investigation
 1-CHRB Report of Investigation
 2-LA County Sherriff's Dept. Inmate Information (Julien Couton)
 3-Arcadia Police Dept. Crime/Incident Report
 4-Couton CHRB License Documents
 5-Couton Licensee/Ruling Inquiry
 6-Branick Licensee/Rulings Inquiry
 7-CHRB Rule 1487
 8-CHRB Rule 1528
 9-CHRB Rule 1900
 10-CHRB Rule 1902
- CHRB Exhibit C* Court file from criminal case, No. GA094503 (*People of State of California vs. Julien Couton*)
- CHRB Exhibit D* Reporter's Transcript from Preliminary Hearing 9/19/2014
- CHRB Exhibit E* Pictures numbered 1-36
- CHRB Exhibit F* Surveillance Video Footage
- CHRB Exhibit G* Request for Official Notice and news articles
- CHRB Exhibit H* Complainant Closing Brief
- Respondent Exhibit 1* Respondent Closing Brief

FACTUAL FINDINGS

I

At all times herein mentioned, Julien Couton was licensed by the CHRB in the license category of jockey.

II

On the night of September 6, 2014, the Respondent had a physical altercation with his girlfriend, Cassandra B, at their joint residence.

III

Both the alleged victim and Mr. Couton participated in the altercation that escalated and de-escalated for approximately 30 minutes.

IV

Arcadia Police Department responded to a 911 call from a neighbor indicating that a domestic disturbance was taking place.

V

A video surveillance tape of parts of the altercation was taken from outside of the joint residence and presented at hearing.

VI

Mr. Couton was arrested on that same night. He was charged with one count of Corporal Injury to a Spouse or Cohabitant and spent 17 days in jail before posting bail.

VII

On March 3, 2015, the criminal case was dismissed when the State of California was unable to proceed.

VIII

The CHRB filed the instant complaint based on the arrest and facts underlying the arrest.

APPLICABLE RULES AND REGULATIONS

California Horse Racing Board rule 1902. Conduct Detrimental to Horse Racing.

No licensee shall engage in any conduct prohibited by this Division nor shall any licensee engage in any conduct which by its nature is detrimental to the best interests of horse racing including, but not limited to:

- (a) knowing association with any known bookmaker, known tout, or known felon.
- (b) indictment or arrest for a crime involving moral turpitude or which is punishable by imprisonment in the state or federal prison, when such indictment or arrest is the subject of notorious or widespread publicity in the news media, and when there is probable cause to believe the licensee committed the offenses charged.
- (c) solicitation of or aiding and abetting any other person to participate in any act or conduct prohibited by this Division.

NOTE: Authority cited: Sections 19440 and 19460, Business and Professions Code.

Reference: Sections 19440 and 19460 and 19572, Business and Professions Code.

HISTORY: 1. Amendment filed 2-22-93; effective 3-24-93.

California Horse Racing Board rule 1900. Grounds for Suspension or Revocation.

Any provision of any rule which is a ground for denial of a license is also a ground for suspension or revocation of a license.

DISCUSSION OF ISSUES

This matter is complicated from a legal standpoint in two ways: (1) CHRB Rule 1902 obfuscates the standard of proof and (2) from an evidentiary standpoint, what hearsay evidence is admissible to prove an allegation when the victim does not testify? First, the case is filed under CHRB Rule 1902 (Conduct Detrimental to Racing) which states, in pertinent part, that “[n]o licensee shall engage in....any conduct which by its nature is detrimental to the best interests of horse racing including, but not limited to...(b) indictment or arrest for a crime involving moral turpitude or which is punishable by imprisonment in the state or federal prison, when such indictment or arrest is the subject of notorious or widespread publicity in the news media, and when there is probable cause to believe the licensee committed the offenses charged.” It is well settled law that during administrative hearings, a complainant must demonstrate by a preponderance of evidence that the rule or regulation has been violated. In this case, the CHRB must demonstrate that it is more likely than not that Mr. Couton violated CHRB rule 1902—that is, it is more likely than not that Mr. Couton “engage[d] in....conduct which by its nature is detrimental to the best interests of horse racing.” The rule goes on to provide an example of such conduct – “(b) indictment or arrest for a crime involving moral turpitude or which is punishable by imprisonment in the state or federal prison, when such indictment or arrest is the subject of notorious or widespread publicity in the news media, and when there is probable cause to believe the licensee committed the offenses charged.” In this case, Mr. Couton was arrested for a crime of moral turpitude for a crime punishable by state imprisonment and the arrest received a fair amount of publicity in racing related publications and social media. In addition, the criminal judge believed that there was sufficient cause for Mr. Couton to stand trial. Putting aside the difference between sufficient and probable cause, it therefore appears that Mr. Couton has violated part (b) of 1902. However, in so doing the standard of proof has been lowered to a probable cause standard rather than the required preponderance of evidence standard. Section (b) appears to be no more than an end run around the required standard of proof. We hold that preponderance of evidence is the proper standard and that therefore in order to demonstrate a violation, the CHRB must demonstrate that it is more likely than not that Mr. Couton engaged in the underlying conduct in order to prove a successful 1902 (Conduct Detrimental to Racing) claim.

Second, this matter is further complicated because the alleged victim did not testify and the only other percipient witness was Mr. Couton. Complainant therefore presented hearsay evidence to prove the violation which included but not limited to: (1) Officer Wong’s statements regarding what the alleged victim said; (2) Investigator Amieva’s statements regarding what the alleged victim said; (3) hearsay included in police reports, investigative reports and court documents. The California Administrative Procedures Act states that “[h]earsay evidence may be used for the purposes of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.” (Government Code section 11513(d)). (Counsel for Mr. Couton made the appropriate timely objections during hearing). The “other evidence” that section 11513(d) requires is direct evidence presented at hearing. The only direct evidence presented at

hearing was the surveillance video showing parts of the altercation and Mr. Couton's own testimony. Therefore we find that any hearsay evidence presented at hearing is only admissible to the extent that it explains Mr. Couton's testimony or the video surveillance tape.

Mr. Couton testified that there was a physical altercation between himself and Cassandra B, but claimed that any slapping, choking or shoving was limited and only done in order to defend himself from Cassandra B's advances and physical attacks. We found Mr. Couton's testimony credible when viewed in light of the only other direct evidence of the altercation—the surveillance video from outside the joint residence. Frankly, we are uncertain as to why the Complainant used the surveillance video as part of its case in chief, except to soften the impact should counsel for Respondent choose to present it. The video shows only the parts of the altercation that occurred outside the residence, but in almost every instance it showed the alleged victim hitting, yelling at, pushing, shoving, throwing things at, and alternating between preventing Mr. Couton from leaving and encouraging him to leave. Mr. Couton appeared quite calm despite repeated attacks, except for one instance in which he pushed the alleged victim in order to regain access to the residence.

The rest of the evidence presented at hearing was mostly hearsay and while some of it is disturbing – Officer Wong's testimony about the state of the alleged victim, and the photographs taken of the victim the day after the incident – ultimately they are hearsay and only admissible in the limited way described above. This Board does not condone domestic violence and applauds the efforts the CHRB has taken in order to protect all licensees. However, due process is necessary to protect all licensees as well. The evidence indicated that a physical altercation did take place between Mr. Couton and Cassandra B., but it also indicated that at the very least, the alleged victim was an equal combatant, if not more. What is clear, however, is that Complainant has not demonstrated by a preponderance of the evidence that Mr. Couton engaged in conduct detrimental to racing. While we understand that the CHRB must pursue these types of complaints even if the likelihood of success is low; we are nevertheless obligated to evaluate the evidence in light of the appropriate standard of proof.

CONCLUSION

Given all of the foregoing, we dismiss case number 14SA225.

DATED: September 7, 2015.

BOARD OF STEWARDS

C. Scott Chaney

P. Kim Sawyer

Tom Ward