

BEFORE THE
CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

In the Matter of:)
)
California Horse Racing Board)
v.)
NICHOLAS CAFARCHIA,)
Owner.)
_____)

Case No. 17SA194

STATEMENT OF DECISION

PROCEDURAL BACKGROUND

The California Horse Racing Board (hereinafter "CHRB" or "Complainant") filed a complaint against owner Nick Cafarchia (hereinafter "Mr. Cafarchia" or "Respondent") pursuant to CHRB rules 1755 (Grounds for Protest), 1756 (Persons Empowered to File Objection or Protest), and 1752 (Grounds for Objection). The complaint memorialized two protests which were timely filed after the running of the eighth race Santa Anita Park on June 24, 2017. The protests were filed by Harris Farms Inc. (owner of second place finisher #6 Record Highs) and by Kelly or Maclennon (owner of third place finisher #1 Crown the Kitten). Both protests called into question the eligibility of the winner of the race #8 My Italian Babbo. Specifically, the protests alleged that the CHRB license of Nick Cafarchia, the owner of #8 My Italian Babbo, was suspended at the time the race was run. We held a formal hearing into the protests on September 2, 2017 to determine if Respondent's horse should be disqualified and how the purse distributed. Present at the hearing were this Board of Stewards (Grant Baker, Scott Chaney, and Kim Sawyer), the Respondent Nick Cafarchia with his attorney Darrell Vienna, Investigator Jim Hamilton representing the CHRB and trainer Sean McCarthy representing his owners, Kelly or Maclennon. The owner of second place finisher #6 Record Highs, Harris Farms Inc. chose not to attend the hearing and therefore its protest is not sustained. Court reporter Michelle Derieg recorded the proceedings. We opened the hearing at 11 a.m., took some oral testimony from Respondent, but as there were no significant questions of fact, most of the hearing involved arguments with respect to the law and regulations. We also labeled documentary evidence and entered it into evidence. Respondent made a closing statement, the record was closed and we took the matter under consideration.

LIST OF EXHIBITS

- CHRB Exhibit I* Complaint packet which included: face page; Governing Procedure for Disciplinary Hearing Before Board of Stewards; CHRB Report of Investigation; Santa Anita Park Program page for the 8th Race on 24 June 2017; Copies of the CHRB Rule 1755, 1756 and 1752; Declaration (Protest) by Glyn Kelly and Anne MacLennon; Declaration (Protest) by Harris Farms Inc.; Board of Stewards Ruling LATS #206 dated June 23, 2017; and CHRB license history for Nicolas Cafarchia.
- Resp. Exhibit A* LATS Ruling #206 dated June 23, 2017.
- Resp. Exhibit B* Daily Racing Form article dated June 26, 2017.
- Resp. Exhibit C* Daily Racing Form results charts from the 8th and 9th races at Santa Anita Park on June 24, 2017.
- Resp. Exhibit D* CHRB License History of Nicholas Cafarchia.
- Resp. Exhibit E* Declarations of owners Glynn Kelly & Anne MacLennon, and Harris Farms Inc..
- Resp. Exhibit F* Photographs of Cafarchia Mail Box and Magazine Box.
- Resp. Exhibit G* Unopened envelope from CHRB; opened at hearing.
- Resp. Exhibit H* Respondent's Opening Brief.

FACTUAL FINDINGS

I

Nick Cafarchia is currently licensed by the CHRB in the license category of owner.

II

Bliss Canyon Stable filed a financial complaint with the CHRB against owner Nick Cafarchia alleging an unpaid farm bill in the amount of \$3,442.00.

III

Respondent was properly noticed but failed to appear for the hearing that was scheduled on June 22, 2017 at Santa Anita Park.

IV

On June 23, 2017, this Board of Stewards issued LATS Ruling #206, suspending Respondent's owner's license for failure to appear. There was no ruling on the underlying merits of the financial complaint.

V

On June 24, 2017, the thoroughbred racehorse "My Italian Babbo" owned by Respondent raced and won the eighth race at Santa Anita Park. Unbeknownst to Respondent, his license was suspended at the time.

VI

On June 25, 2017, upon hearing of the ruling and suspension, Respondent provided payment of the alleged debt and this Board of Stewards issued LATS Ruling #212 which set aside the suspension order and restored Mr. Cafarchia's license to good standing.

VII

On June 30, 2017, the owners of the second and third place finishers of the June 24 race filed timely protests, alleging that "My Italian Babbo" was ineligible to race because his owner's license was suspended at the time the race was run. For that reason, they requested that "My Italian Babbo" be disqualified and the purse be distributed accordingly.

APPLICABLE RULES AND REGULATIONS

California Horse Racing Board 1481. Occupational Licenses and Fees.

No person required to be licensed shall participate or attempt to participate in a race meeting without holding a valid license authorizing that participation.

- (a) A person acting in any capacity within the restricted area of an inclosure, simulcast facility or auxiliary stabling area shall procure the appropriate license(s) and pay the fee required.
- (b) A person acting in any of the following capacities shall procure the appropriate license(s) and pay the fee required:

...

(3) Horse Owner.....\$150

...

NOTE: Authority cited: Sections 19440, 19510, 19520 and 19704, Business and Professions Code. Reference: Sections 19510, 19520, and 19704, Business and Professions Code.

HISTORY:

- 1. Repealer and new rule filed 12-31-82; effective 1-1-83.

- ...
- 14. Amendment filed 3-5-09; effective 4-4-09.

California Horse Racing Board 1592. Ineligible Horse to Be Disqualified.

A horse ineligible to be entered for a race, or ineligible to start in any race, who competes in such race may be disqualified and the stewards may discipline anyone responsible therefor.

California Horse Racing Board rule 1752. Grounds for Objection.

An objection to a horse which is entered to race shall be made on the following grounds or reasons:

...

(d) That the horse is owned in whole or in part by a person ineligible to participate in racing or otherwise ineligible to win a race horse as provided in this Division..

NOTE: Authority cited: Sections 19420, 19440, and 19562, Business and Professions Code. Reference: Sections 19420, 19440, and 19562, Business and Professions Code.

HISTORY:

1. Amendment filed 12-23-96; effective 1-22-97.

California Horse Racing Board rule 1755. Grounds for Protest.

A protest to the stewards may be made on any of the following grounds:

(a) Any ground for objection as set forth in this Article.

...

(c) A jockey, driver, trainer or owner of a horse which started in the race was ineligible to participate in racing as provided in this Division.

...

NOTE: Authority cited: Sections 19420, 19440, 19562, Business and Professions Code. Reference: Sections 19420, 19440, and 19562, Business and Professions Code.

HISTORY:

1. Amendment filed 9-18-95; effective 10-18-95.

California Horse Racing Board rule 1756. Persons Empowered to File Objection or Protest.

A jockey, driver, trainer or owner of a horse which is entered for or is a starter in a race is empowered to file an objection or protest against any other horse in such race upon the grounds set forth in this article for objections and protests.

California Horse Racing Board rule 1759. Horse to Be Disqualified on Valid Protest.

If a protest against a horse which has won or which has placed in any race is declared valid, that horse may be disqualified and other horses in the race are entitled to places in the order in which they finished. A horse so disqualified is a starter in the said race and may be placed last in the order of finish, or behind a horse interfered with.

California Horse Racing Board rule 1760. Purse Award or Prize to Be Withheld.

The stewards or the Board may order any purse, award or prize for any race withheld from distribution pending the determination of any protest; and in the event any purse award or prize has been distributed to an owner or for a horse which by reason of a protest or other reason is disqualified or determined to be not entitled to such purse,

award or prize, the stewards or the Board may order such purse, award or prize returned and redistributed to the rightful owner or horse. Any person who fails to comply with an order to return any purse, award or prize erroneously distributed shall be suspended until its return.

DISCUSSION OF ISSUES

The purpose of this hearing is to determine whether the protest of “My Italian Babbo’s” participation in the June 24 race should be considered valid and therefore whether he should be disqualified. There are no disputes of material fact in this case. The Board of Stewards is given wide latitude in determination of protests in that if we determine a protest to be valid, CHRB Rule 1760 states that the “horse *may* be disqualified.” (emphasis added) At first glance, this matter appears fairly straight forward. Respondent’s license was suspended at the time the race was run; he was therefore ineligible to participate in the race; and pursuant to CHRB Rule 1755, said ineligibility is a valid grounds for protest and hence the horse should be disqualified. Respondent argued against this logic on four fronts in his twenty six page opening brief presented to the Stewards: (1) notice; (2) estoppel; (3) “set aside” argument and (4) Stewards’ discretion. This Board is unanimous in our analysis of the first two, but disagree with respect to the latter two.

I. NOTICE OF JUNE 22 STEWARDS’ HEARING

Respondent argued that he did not receive notice of the original hearing and therefore the suspension was not appropriate. We unanimously reject this argument. Respondent spent some time explaining his unique mailbox and mail delivery, but to this Board, the fact that he received the notice of the hearing in a timely manner but failed to open it because it went into the wrong pile of mail is not persuasive. There was no evidence that the CHRB or Investigator James Hamilton improperly served the ‘Notice to Appear’ for this hearing. We feel that CHRB Rule #1413 (Notice to Licensee) was properly followed. A good amount of time at the September 2, 2017 hearing focused on how Mr. Cafarchia had his mail separated with a ‘ No Mail Magazines’ Only’ box and a ‘Mail Only’ wall slot. Mr. Cafarchia brought the envelope from the CHRB to the hearing. It was unopened. When opened in our office on September 2, 2017 it contained the ‘Notice to Appear’. He said he found this mail at his house after the June 22, 2017 hearing. We find this argument carries little to no weight.

II. THE STEWARDS ARE ESTOPPED FROM REDISTRIBUTING THE PURSE

Respondent argued that the Stewards were estopped from disqualifying “My Italian Babbo” because we had constructive knowledge that Mr. Cafarchia’s license was suspended and allowed the horse to run despite that knowledge. We also unanimously reject this argument. Respondent correctly points out that applying the doctrine of estoppel against a government agency requires additional findings including, but not limited to, that the party to be estopped must be apprised of the facts. While the Board of Stewards unquestionably knew that Mr. Cafarchia’s license had been suspended (we

issued and signed the ruling), what is also clear is that we had no actual knowledge that Respondent owned a horse that was running the following afternoon. Mr. Cafarchia was well aware that monies were owed to Bliss Canyon Stable (Jose Mora) and acknowledged having conversations with representatives of the farm. He knew the bills were “four, five months, six months” old. Mr. Cafarchia may not have known he was suspended but he was not or should not have been ignorant of the fact that failing to pay a farm bill could and often does lead to a CHRB complaint being filed against him and having the matter heard at the racetrack by CHRB Stewards. Mr. Cafarchia had addressed a financial complaint filed against him in October 2013 by Veterinarian Nolton Pattio. In August 2015, Veterinarian Stephanie Schmidt also filed a financial complaint against Mr. Cafarchia.

In the very next race (ninth) following the ‘My Italian Babbo’ race, the Nick Cafarchia owned ‘Radio Chatter’ participated. The Stewards present that afternoon (Steward Chaney was not) discussed scratching that horse prior to it running in the short amount of time as the horses headed to the gate for the ninth race. However, the Stewards allowed the horse to start not knowing at that time if Mr. Cafarchia had received procedural due process, specifically, if he was properly noticed for hearing as outlined in California Horse Racing Board Rule # 1413 (Notice to Licensee). The Stewards now know, following the September 2, 2017 hearing that Mr. Cafarchia was properly noticed for hearing, and therefore the doctrine of estoppel is not applicable.

III. THE SUSPENSION RULING WAS ‘SET ASIDE’

Respondent argued that when this Board issued the ruling restoring him to good standing, that we set aside our suspension order; and that the legal import of that action was that the suspension order was therefore cancelled or annulled or voided. The majority of this Board also rejects this argument. The majority believes that Respondent was suspended at the time the horse ran, that he was therefore ineligible to participate in racing and that the restoration was just that – and action that restored his license to good standing after being suspended. The majority in this case respects the minority Steward’s opinion that the language ‘set aside’ voids the original suspension. However, this does not change that it is an undeniable fact that Mr. Cafarchia was suspended on race day (June 24, 2017) and therefore in the opinion of the majority, legally prohibited from collecting any purse monies while suspended. This was the genesis of the two (2) separate protests filed by Owners Glynn Kelly and Anne MacLennan, Owner Harris Farms, Inc. and reiterated by Trainer Sean McCarthy who appeared at the September 2, 2017 hearing.

Steward Chaney disagrees. He believes that the use of the very specific language of “set aside” in the restoration ruling voids the original suspension and therefore in layman’s terms, renders it as if it never existed. Hence, Steward Chaney believes that a disqualification and purse redistribution would be improper.

IV. THE STEWARDS HAVE DISCRETION IN THIS MATTER

The majority agrees with this heading. The Stewards feel a decision either way in this case is reasonably justified. Two (2) protests were filed in this case. One (1) was by

Debbie Winick on behalf of Owner Harris Farms Inc. The other was filed by Trainer Sean McCarthy on behalf of owners Glynn Kelly and Anne MacLennan. Sean McCarthy appeared at the September 2, 2017 hearing at Del Mar. At this hearing Sean McCarthy asked in part.... "The only question that I have is, was the horse eligible or not?" No questions were asked by representatives of Harris Farms Inc. as they did not appear at the September 2, 2017 hearing. California Horse Racing Board Rule #1481 (Occupational Licenses and Fees and Rule #1755(c) (Grounds for Protest) are fairly straightforward. The first sentence of Rule #1481 reads as follows: "No person required to be licensed shall *participate or attempt to participate* in a race meeting without holding a *valid license* authorizing that *participation*." (emphasis added) There are twenty eight (28) articles in the California Horse Racing Board Rule Book. This rule is the first rule listed under Article 4 – Occupational Licenses. Simply stated the majority feels that in order to participate in the June 24, 2017 eighth race at Santa Anita Mr. Cafarchia should have held a valid CHRB license as required in Rule #1481. CHRB Rule #1755 (Grounds for Protest) states: "A protest to the Stewards may be made on any of the following grounds...(c) A jockey, driver, trainer or owner of a horse which started in the race *was ineligible to participate* in racing as provided in this division." (emphasis added) The matter that 'My Italian Babbo' did not gain any advantage, much less an unfair advantage is a 'moot point' to the majority. Mr. Cafarchia's failure to appear for hearing to address CHRB Rule #1876 (Financial Responsibility) on June 22, 2017 is nobody's fault but his own. Owner Nicholas Cafarchia knew he owed money to Bliss Canyon Stable for board and care of thoroughbred race horses. He stated as much at hearing. Mr. Cafarchia said he did not agree with the amount he was billed by Bliss Canyon Stable (Jose Mora) and this is why he didn't pay. Mr. Cafarchia failed to appear for a hearing in our office on June 22, 2017 at Santa Anita Park. His owner's license was suspended on June 23, 2017. On June 24, 2017 "My Italian Babbo" finished 1st in the eighth race at Santa Anita Park. The following day (June 25, 2017) Mr. Cafarchia paid the full amount owed to Bliss Canyon Stable and his license was subsequently restored to good standing, and he again became eligible to participate in racing. The majority feels that if we do not uphold these rules its poor precedent for future similar situations. We also feel that allowing this horses' win to stand would undermine the credibility of the California Horse Racing Board's licensing procedures.

In dissenting Steward Chaney believes that the Stewards should exercise their discretion in this matter and not disqualify "My Italian Babbo." While not explicitly argued by the Respondent, Steward Chaney, in the minority, finds that given the latitude the Stewards possess in whether to disqualify or not, equity and fairness point to allowing the race to remain unaltered. Not only was the original suspension order for *failure to appear* and not the underlying merits, and while Respondent should have been aware of the hearing, he was not aware and upon being apprised of the situation, appeared as ordered and settled the underlying claim. Furthermore, Respondent's horse did not gain any unfair advantage in the race, won the race on its own ability and rewarding the horses that were unable to win the race constitutes unjust enrichment. Lastly, that the Board of Stewards had actual knowledge of the fact that Mr. Cafarchia's license was suspended (learned after "My Italian Babbo" ran) and nevertheless allowed the second horse owned by Mr. Cafarchia to run indicates that the suspension itself was not controlling. Had that

horse competed more successfully (and had a protest been filed), it appears that the majority would have disqualified that horse as well, knowing of the suspension. This does not seem equitable to the minority.

CONCLUSION

For the foregoing reasons, the majority determines that My Italian Babbo was *not* eligible to participate on June 24, 2017 and therefore shall be disqualified and the purse money be distributed based on the adjusted order of finish. This action is memorialized in the ruling that follows.

DATED: December 3, 2017.

State of California
CALIFORNIA HORSE RACING BOARD

Official Ruling

of the
Board of Stewards

LOS ALAMITOS WINTER THOROUGHBRED MEET

(Association)

December 3, 2017

(Date)

LWTL #008

Pursuant to California Horse Racing Board rules 1755 (Grounds for Protest – suspended owner's license; ineligible to participate) and 1759 (Horse to be Disqualified on Valid Protest), MY ITALIAN BABBO, who won the eighth race at Santa Anita Park on June 24, 2017, is disqualified from all purse monies earned in said race and deemed unplaced. The Paymaster of Purses at Santa Anita is ordered to distribute the purse money in said race in accordance with the revised order of finish:

- 1st Record Highs
- 2nd Crown the Kitten
- 3rd Unapologetic
- 4th Street Moxie
- 5th Rye Patch

All records are order to reflect this ruling. In accordance with California Horse Racing Board rule #1856 (Race Declared Official) neither pari-mutuel payoffs nor the distribution of a pari-mutuel pool shall be affected.

LIC#: 089052 exp. 5/2018
CASE#: 17SA194

BY ORDER OF THE
BOARD OF STEWARDS

Grant Baker

C. Scott Chaney

Kim Sawyer