

BEFORE THE
CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

In the Matter of:)	
)	
California Horse Racing Board)	
v.)	Case No.
DAVID FLORES,)	
Jockey)	
_____)	

STATEMENT OF DECISION

PROCEDURAL BACKGROUND

On March 25, 2015, the Stewards of the Singapore Turf Club (hereinafter “Singapore” or “Stewards”) conducted an inquiry into the ride of jockey David Flores (hereinafter “Flores” or “Respondent”) aboard the horse “Kiss Me” who competed in the first race on February 22, 2015 at the Singapore Turf Club. Following that inquiry, the Stewards issued a ruling that disqualified Respondent for a period of one year (March 25, 2015 – March 24, 2016). The Stewards concluded that Flores failed “to take all reasonable and permissible measures to ensure “Kiss Me” was given full opportunity of obtaining the best possible placing.” (*CHRB Exhibit A*). On or about April 9, 2015, Respondent formally requested permission to ride here in California despite the Singapore disqualification and his inability to obtain a clearance letter from the Singapore Turf Club. A hearing was set for April 16, 2015, to address this matter. On that date, the California Horse Racing Board (hereinafter “CHRB” or “the Board”) filed a formal complaint (case number 15SA0128) seeking enforcement of the Singapore ruling, and requested a continuance to adequately prepare for the hearing. That request was granted. A formal hearing was held on April 23, 2015, in the Stewards’ office at Santa Anita Park. The CHRB was represented by CHRB Staff Counsel Philip Laird and Mr. Flores was represented by attorney Darrell Vienna. Also present at the hearing were the Board of Stewards – C. Scott Chaney, Luis Jauregui and Tom Ward, Respondent Flores, and CHRB Supervising Investigator Rick Amieva. Witnesses included Mr. Flores on his own behalf, and jockeys Mike Smith and Gary Stevens. The proceedings were recorded by Michelle Derieg. After taking oral testimony and receiving documentary evidence, the matter was closed. The record was briefly reopened to on April 25, 2015, to admit one further document, before which both parties consented to said action. The matter was once again closed.

LIST OF EXHIBITS

CHRB Exhibit A Complaint Packet including: cover page, history and description of the Malayan Racing Association (MRA), the pertinent MRA Rules and Regulations, Visiting Jockeys Briefing, Singapore Turf Club Application for Club Jockey Licence [sic], Stewards' Report 22 February 2015, Stewards' Report 3 April, 2015, a series of questions and answers between the CHRB and the Singapore Turf Club, a letter from the Secretary of the MRA Steven Tan confirming the Stewards' ruling,

CHRB Exhibit B Complainant's Hearing Brief

Respondent Exhibit #1 MRA Rule 44 Race riding and further responsibilities of jockeys

Respondent Exhibit #2 A series of questions and answers between the CHRB and the Singapore Turf Club

Respondent Exhibit #3 Letter from Darrell Vienna requesting information, documents, videos; an appeal to the Singapore Turf Club (STC); and a letter from STC's legal counsel responding to the aforementioned requests

Respondent Exhibit #4 Race Record of Kiss Me

Respondent Exhibit #5 Chart from Kiss Me's race of 22 February 2015

Respondent Exhibit #6 Chart from Kiss Me's race of 2 January 2015

Respondent Exhibit #7 Chart from Kiss Me's race of 22 March 2015

Respondent Exhibit #8 CHRB Rule #1484

Respondent Exhibit #9 Chart of US Jurisdictions regarding reciprocity policy

Respondent Exhibit #10 The Times article

Respondent Exhibit #11-14 Evidence Code Sections

Respondent Exhibit #15 Webpage from STC regarding disqualification

Respondent Exhibit #16 MRA Rule 159 Powers and authority of the panel of Stewards

Respondent Exhibit #17 Letter from the Jockeys' Guild Inc.

Respondent Exhibit #18 Opening Brief in Support of Licensing David Flores

FACTUAL FINDINGS

I

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

II

Respondent was granted a visiting jockey's license by the Singapore Turf Club for the period from January 1, 2015, to June 30, 2015.

III

Respondent rode the thoroughbred racehorse Kiss Me in the first race at the Singapore Turf Club on February 22, 2015. He and his mount finished fourth beaten one half length for third position.

IV

The panel of stewards at the Singapore Turf Club conducted an inquiry on March 25, 2015, into the above mentioned race and more specifically into Mr. Flores' ride in said race.

V

During the inquiry in Singapore, Mr. Flores and the trainer of Kiss Me both testified. The panel of stewards also examined the race video as well as the Mr. Flores' riding record. Mr. Flores had previously received a warning for his fourth place finish aboard Satellite King on June 20, 2014, in the eighth race.

VI

The panel of stewards at the Singapore Turf Club concluded that Respondent had violated MRA 44 because he "failed to take all reasonable and permissible measures to ensure that [his mount] was given the full opportunity of obtaining the best possible placing." Based on that violation, Flores was disqualified for one year which is the minimum under MRA rules for such a finding.

VII

Respondent was informed of his right to appeal, but chose not to exercise that right in a timely fashion. Respondent's counsel requested an extension to the time allowed under the MRA rules, however such request was denied.

VIII

Respondent requested a fitness hearing to ride in California during the Singapore disqualification pursuant to CHRB rule #1484.

IX

Pursuant to CHRB Rule #1484, this Board finds that the Singapore Turf Club under the auspices of the Malayan Racing Association is a competent jurisdiction and therefore the disqualification ruling is prima facie evidence that Respondent is unfit to hold a license in this jurisdiction.

APPLICABLE RULES AND REGULATIONS

Rule No.	Rule Title
1484	Evidence of Unfitness for License.
Rule Text	If any applicant for a license or any licensee is under suspension, set down, ruled off, excluded from the inclosure, or otherwise barred from any racing occupation or activity requiring a license, it is prima facie evidence that he or she is unfit to be granted a license or unfit to hold a license or participate in racing in this State as a licensee during the term of any suspension or exclusion from racing imposed by any competent racing jurisdiction. NOTE: Authority cited: Section 19440, Business and Professions Code. Reference: Sections 19460, 19461 and 19510, Business and Professions Code. HISTORY: 1. Amendment filed 4-21-83; effective 5-21-83.

MRA Rule 44. Race riding and further responsibilities of jockeys

(8) The jockey of every horse in a race shall take all reasonable and permissible measures throughout the race to ensure that his horse is given full opportunity of winning or of obtaining the best possible placing.

(a) Notwithstanding anything contained in these Rules should the Stewards find any jockey guilty of a charge under Rule 44(7) or 44(8) the Stewards shall disqualify such person. The disqualification shall be for a period of not less than one (1) year. In addition, the Stewards may impose a fine not exceeding \$250,000.

DISCUSSION OF ISSUES

The natural inclination of Boards of Stewards when faced with whether or not to enforce a ruling made by a Board of Stewards from another jurisdiction is to display professional courtesy and reciprocate that ruling. This stems partly from a sense of commiseration and empathy, and partly because that reciprocation may be expected from the other Board at some point in the future. What Stewards hold higher than this inclination, however, is adherence to the rule of law. In California, there is a specific CHRB regulation that governs matters such as the one at hand and that is rule 1484. It specifically states that “[i]f...any licensee is....set down, ruled off, excluded from the inclosure, or otherwise barred from any racing occupation or activity requiring a license, it is *prima facie* evidence that he...is unfit to....hold a license or participate in racing in [California]....during the term of...exclusion from racing imposed by any competent racing jurisdiction.” In this case, all parties agree that the Singapore Turf Club through the Malayan Racing Association exercised competent jurisdiction in this case. Therefore, its one-year disqualification of Mr. Flores is *prima facie* evidence that he is unfit to hold a license here. The rule does not make the reciprocation automatic or summary; however, it rather provides the licensee, Respondent in this case, the opportunity to overcome that *prima facie* evidence. *Prima facie*, Latin for “at first sight” or “on its face,” means that the moving party (in this case, the CHRB), has met its burden of proof in supporting its claim. In this case, the CHRB relied solely on the Singapore ruling itself, and therefore met its burden in proving, by a preponderance of the evidence, that Respondent is unfit to hold a jockeys’ license. The burden then shifts to Mr. Flores to present evidence that he is fit to hold a license in his attempt to prove this notion by a preponderance of the evidence. In this matter, the real and difficult question is what type of evidence Mr. Flores is permitted to present.

Is he permitted to simply present evidence of his good character, superlative riding record, license history, and the due process protections present regarding the original ruling or is he permitted to attempt to undermine the inquiry upon which his disqualification is based? Mr. Flores, based on evidence presented at hearing and this Board’s own knowledge, is of excellent character and reputation; has never been accused, much less penalized for a best efforts violation; and is one of the most skilled riders in this country. In this case, we believe that there should be some examination of the underlying ruling for three reasons: (1) the decision is based on a subjective interpretation of the local rules; (2) the penalty for this violation is draconian; and (3) not doing so would render meaningless the idea that a licensee could ever present evidence which could overcome the *prima facie* evidence that triggered a hearing under CHRB rule 1484. At this point, it is important to note this statement of decision only applies to cases involving this specific set of circumstances. That is, this Board will not examine every ruling made in other competent jurisdictions. The most obvious examples are medication positives where the underlying rulings are typically not based on interpretation of rules or based on subjective analysis.

The decision to disqualify Mr. Flores was based on a subjective interpretation of the best efforts rule in Singapore which is substantially similar to the equivalent rule in California (arguably, California's rule is more restrictive). Two race riding expert witnesses, jockeys Mike Smith and Gary Stevens, both testified to the fact that Mr. Flores had not only given his best efforts in the race in question, but gave the horse a superlative ride. While this Board would not go as far to aver that the ride was superlative, it does seem a reach to claim that it was in violation of the best efforts rule. Further, even if one could conclude that Respondent had not used his best efforts in said race, a minimum penalty of one year for this alleged violation as required by MRA rule 44, seems to this Board, quite harsh. This seems better reserved to punish a jockey who actively prevents his horse from exerting its best efforts – a claim that no one makes in this case. (And, point of fact, Mr. Flores has already served over a month of this disqualification). This Board is somewhat troubled by the fact that Mr. Flores failed to lodge a timely appeal as permitted by the local rules. Admittedly, his case would be stronger had he exhausted all of his administrative remedies before seeking relief with this Board. However, this flaw is not fatal. Eventually, Mr. Flores did request an extension of the time permitted to file an appeal as allowed under the MRA rules. That request was summarily denied. Further, the MRA rules allow for the Racing Stewards to conduct a *sua sponte* review any decision by the panel of Stewards – an action that was not taken the instant case. To this Board, a one year disqualification should trigger the utmost due process protection to the extent allowed under the regulations. Lastly, should Respondent not be permitted to present evidence (in this specific kind of case) regarding the underlying ruling, under 1484, he would certainly not ever be able to overcome the *prima facie* evidence created by the original ruling, rendering the fitness hearing a mere formality. Clearly that could not have been the intent of the rule. However, as has been stated already, we emphasize that this statement of decision will not apply to other types of rulings such as medication violations nor apply to garden variety riding suspensions for careless riding.

CONCLUSION

Given all of the foregoing, we issued the following ruling:

State of California
CALIFORNIA HORSE RACING BOARD

Official Ruling
of the
Board of Stewards

SANTA ANITA SPRING MEET
(Association)

May 7, 2015
(Date)

LATS #100

Following a formal fitness for license hearing, pursuant to California Horse Racing Board rule #1484 (Evidence of Unfitness for License) jockey DAVID FLORES is permitted to hold a license in the category of jockey.

DOB:
LIC: 208280 exp. 2/2018
CASE:

BY ORDER OF THE
BOARD OF STEWARDS

C. Scott Chaney

Luis Jauregui

Tom Ward