

BEFORE THE CALIFORNIA HORSE RACING BOARD
OF THE STATE OF CALIFORNIA

In the Matter of:

**Appeal of the Board of Stewards Official
Ruling #11, DMTD Del Mar Thoroughbred
Meet, dated July 24, 2021**

**KENT DESORMEAUX
CHRB License # 209912
Appellant**

Case No. SAC-0063

DECISION

The attached Proposed Decision is hereby adopted by the California Horse Racing Board as its Decision in the above-entitled matter.

This Decision is hereby remanded to the Board of Stewards to issue a ruling and order for setting the dates of suspension.

The Decision shall become effective on March 19, 2022.

IT IS SO ORDERED ON March 18, 2022.



CALIFORNIA HORSE RACING BOARD
Gregory L. Ferraro, DVM, Chairman

C. Scott Chaney

Scott Chaney
Executive Director

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BEFORE THE CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

In the Matter of:	)	Case No.: SAC 21-0063
	)	
Appeal of the Board of Stewards' Official Ruling No. 11, Del Mar Thoroughbred Club, Dated July 24, 2021	)	PROPOSED DECISION RE: APPEAL OF THE BOARD OF STEWARDS' OFFICIAL RULING NO. 11, DEL MAR THOROUGHBRED CLUB, DATED JULY 24, 2021
	)	
KENT DESORMEAUX C.H.R.B. LICENSE NO. 209912	)	
	)	
Appellant.	)	Hearing Date: December 2, 2021 Time: 10:00 a.m.
	)	

I. INTRODUCTION

This matter arises from an Appeal of the Board of Stewards' Official Ruling No. 11, Del Mar Thoroughbred Club, Dated July 24, 2021 (the "Appeal").

This Appeal came for hearing on December 2, 2021 at 10:00 a.m. via video conference as well as in person at Los Alamitos Racecourse. Michelle Derieg recorded all testimony presented during the proceeding. Pursuant to California Horse Racing Board Rule 1414, Hearing Officer Patrick J. Kane ("Officer") presided over the Appeal.

Appellant Kent Desormeaux ("Appellant") was present and represented by attorney Bing Bush. The California Horse Racing Board ("Respondent" or the "CHRB") (collectively, with Appellant, referred to as the "Parties") was present and represented by attorney Robert Brodnik.

The Appeal's evidentiary record closed at the conclusion of the proceedings on December 2, 2021 at approximately 12:35 p.m.

1 **II. EXHIBITS ADMITTED INTO EVIDENCE**

2 **A. Exhibits Entered into Evidence.**

3 The Parties jointly entered the following exhibits into evidence:

4 Exhibit “1” The Stewards’ Ruling, No. 11, and Minutes Dated July 19, 2021
5 through July 25, 2021; and

6 Exhibit “2” DVD of the First Race at the Del Mar Thoroughbred Club Run on
7 July 23, 2021.

8 **III. LIST OF TESTIFYING WITNESSES**

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

10 Appellant called the following the witnesses:

- 11 • Mike Smith;
12 • Chris McCarron; and
13 • Kent Desormeaux.

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

15 The CHRB called the following the witnesses:

- 16 • The Hon. Luis Jauregui;
17 • The Hon. Grant Baker; and
18 • The Hon. Kim Sawyer.

19 **IV. FACTUAL FINDINGS**

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

22 **I.**

23 On July 23, 2021, Appellant rode the number seven (7) horse, Seven Exes (“Seven Exes”
24 or the “Horse”), to a fifth-place finish in the first race at the Del Mar Thoroughbred Club, a maiden
25 claiming event run at a distance of five (5) furlongs on the dirt course (the “Race”). (Ex. 1.)

26 **II.**

27 At the start of the Race, Seven Exes “[broke] in sharply mak[ing] significant contact with
28 third place finisher,” the number six (6) horse “I’m a Giraffe,” causing a chain reaction with

1 “rivals to his inside, [including] the number five (5) horse Blame It On Rose and the number four
2 (4) horse Jacrodra’s Devil, [who] were both bumped and severely impeded.” (Ex. 1.)
3 Specifically, at the beginning of the Race, Seven Exes “broke inwards” causing interference with
4 three to four horses to the inside of Seven Exes (the “Contact”). (Hearing Transcript (“H.T.”) at
5 p. 59-60, Exs. 1-2.)

6 As a result, the Board of Stewards (the “Stewards”) conducted an inquiry into the Race.
7 (Ex. 1 at p. 2.) The Stewards unanimously determined that at the start of the Race, Seven Exes
8 impeded and caused interference with several horses to the “inside of” Seven Exes resulting in
9 the Horse being disqualified and placed sixth. (Id.)

10 III.

11 On July 24, 2021, Appellant appeared before the Stewards to review film of his ride during
12 the Race. (Ex. 1 at p. 4.) After analyzing the Race’s replay and discussing the Contact with
13 Appellant, the Stewards unanimously determined that: (1) Appellant “used his riding crop (right-
14 handed) as the starting gate opens...”; (2) “Seven Exes subsequently ducks [in] and compromises
15 the chances of the three (3) horses to [Seven Exes’] inside”; and (3) Appellant’s actions, and not
16 [the actions of] Seven Exes, “led to the subsequent disqualification.” (Id.)

17 Accordingly, on July 24, 2021, the Stewards unanimously issued Official Ruling No. 11,
18 Del Mar Thoroughbred Club (the “Ruling”), which made the following factual findings:

19 Jockey KENT DESORMEAUX, who rode SEVEN EXES in the first race at Del
20 Mar Racetrack on July 23, 2021, is suspended for THREE (3) racing days (July 31,
21 August 1, and 5, 2021), for failure to maintain a straight course leaving the starting
22 gate and causing interference, which resulted in the disqualification of his mount
from fifth to sixth place. This constitutes a violation of California Horse Racing
Board rule #1699 (Riding Rules – careless riding).

23 Pursuant to California Horse Racing Board Rule #1766 (Designated Races), the
24 term of suspension shall not prohibit participation in designated races. (Ex. 1 at p.
9.)

25 IV.

26 Appellant subsequently appealed the Ruling. The CHRB proceeded to set this Appeal for
27 hearing on December 2, 2021 via video conference. (H.T. at p. 5.)

28 V. ISSUES ON APPEAL AND CONTROLLING LAW

1 The issue before this Officer is whether Appellant met the required burden proof needed
2 to overrule the Stewards' unanimous Ruling, that Appellant failed "to maintain a straight course
3 leaving the starting gate and causing interference...[resulting] in the disqualification of [Seven
4 Exes]" in violation of Cal. Code Regs. Tit. 4 § 1699 ("Section 1699"). Section 1699 states in
5 pertinent part:

6 During the running of the race:

7 (a) A horse shall not interfere with any other horse. Interference is defined as
8 bumping, impeding, forcing or floating in or out or otherwise causing any other
horse to lose stride, ground, momentum or position.

9 (b) A horse which interferes with another as defined in subsection (a) may be
10 disqualified and placed behind the horse so interfered with if, in the opinion of
the Stewards, the horse interfered with was not at fault and due to the
11 interference lost the opportunity for a better placing.

12 (c) Jockeys shall not ride carelessly, or willfully, so as to permit their mount to
interfere with any other horse.

13 (d) Jockeys shall not strike or strike at another horse or jockey so as to impede,
14 interfere with, intimidate, or injure.

15 (e) If a jockey rides in a manner contrary to this rule, the mount may be
disqualified and the jockey may be suspended or otherwise disciplined by the
16 Stewards.

17 Appellant has the burden of proving facts necessary to sustain this Appeal. (See, Cal.
18 Code Regs. Tit. 4 § 1764 ["The burden shall be on the appellant to prove the facts necessary to
19 sustain the appeal."].) In reviewing an administrative decision "that substantially impacts a
20 fundamental vested right, [this Officer shall]...exercise [his] independent judgment upon the
21 evidence." (*Alberda v. Board of retirement of Fresno County Employers' Retirement Assn.*
22 (2013) 214 Cal.App.4th 426, 433, citations omitted.)

23 "In carrying out this independent review, [this Officer] must afford the agency's decision
24 a strong presumption of correctness and must impose upon [Appellant] the burden of showing
25 that the agency's findings are contrary to the weight of the evidence, i.e., the decision was not
26 supported by the preponderance of the evidence." (*Alberda*, supra, 214 Cal.App.4th at 433,
27 citations omitted.) "Preponderance of the evidence means what it says, viz., that the evidence on
28 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) 226 Cal.App.3d 314, 325, citations omitted.)

“[W]hile [this Officer] begins [his] review with a presumption of the correctness of the [agency’s decision], the presumption is rebuttable and may be overcome by the evidence.”
(*Alberda*, supra, 214 Cal.App.4th at 433, citations omitted.) “When applying the independent judgment test, [this Officer] may reweigh the evidence and substitute [his] own findings for those of the [agency], after first giving due respect to the [agency’s] findings.” (*Breslin v. City and County of San Francisco* (2007) 146 Cal.App.4th 1064, 1077.)

Because this Appeal solely concerns whether the evidence presented supports the Stewards’ Ruling, that Appellant failed to maintain a straight course causing interference in violation of Section 1699, Appellant must demonstrate the Ruling is not supported by a preponderance of the evidence.

VI. SUMMARY OF EVIDENCE PRESENTED

In support of his Appeal, Appellant testified on his own behalf and separately called Mr. Mike Smith (“Mr. Smith”) and Mr. Chris McCarron (“Mr. McCarron”) to testify on his behalf.

A. Summary of Testimony Presented by Appellant.

In support of showing that he did not violate Section 1699, Appellant presented the following testimony:

1. Mr. Smith’s Expert Testimony.

Mr. Smith has been a jockey for thirty-nine (39) years in which he has ridden in thousands of races and was inducted into the Hall of Fame in 2003. (H.T. at p. 8.) Appellant offered Mr. Smith as an expert witness in the field of race riding. (Id.)

Concerning the Contact, Mr. Smith provided the following testimony:

(1) Appellant used his riding crop to ask Seven Exes to leave the starting gate and the Horse “ducked in” causing Appellant to “grab the Horse as hard as he could [to] straightened her back out”; (2) Appellant was not at fault for the Contact by using his riding crop at the beginning of the Race as a jockey can “ask” a horse leaving the starting gate; (3) there is nothing Appellant could have done different to prevent the Contact from occurring; (4) Appellant appeared to have lost his balance leaving the gate, “just for a second,” and “got control” of Seven Exes as soon as Appellant regained his own balance; and (5) Appellant was not careless as Seven Exes breaking inwards was an “unavoidable consequence” that Appellant attempted to

correct as soon as he could. (H.T. at p. 11, 13-14.)

2. Mr. McCarron's Expert Testimony.

Prior to retiring, Mr. McCarron was a jockey for approximately twenty-eight (28) years in which he: (1) was inducted into the Racing Hall of Fame in 1989; (2) rode in over 34,000 races; and (3) won approximately 7,141 races, including multiple Kentucky Derbies, Preaknesses, Belmonts, and nine Breeders Cup races. (H.T. at p. 25-26.) Appellant offered Mr. McCarron as an expert witness in the field of race riding. (Id. at 26-27.)

Concerning the Contact, Mr. McCarron testified that he watched the Race's replay approximately twenty (20) to twenty-five (25) times. (H.T. at p. 27.). After doing so, Mr. McCarron came to the following conclusions:

(1) Seven Exes broke "inward" on her own, independent of Appellant's actions; (2) Appellant's use of the riding crop "was [not] the wrong thing to do" as its common to do so with a horse breaking from the far outside; (3) Appellant had no reason to believe Seven Exes would break inward upon leaving the starting gate; (4) Appellant is not at fault for losing his balance as Seven Exes broke inward at the start of the Race; (5) Appellant was not careless in causing the Contact; (6) Appellant tried to correct Seven Exes as quickly as possible and could not have done so any sooner than Appellant did; and (7) Appellant should not be sanctioned for the Contact as "he did a terrific job making an effort to get [Seven Exes] straightened out." (H.T. at p. 28-29, 31, 32-33, 36-37, 37-38.)

Mr. McCarron further testified that Appellant's use of his riding crop when Seven Exes left the starting gate did not cause the Contact and that Appellant could not have reacted any faster in trying to avoid the Contact. (H.T. at p. 42-43.)

3. Appellant's Testimony.

Appellant is a Southern California based jockey who has been licensed for thirty-six years (36) in a career that includes: (1) being inducted into the Hall of Fame in 2004; (2) riding in approximately 40,000.00 races; (3) winning the Kentucky Derby and Preakness three times; and (4) winning several Breeders' Cup races. (H.T. at p. 70.)

Concerning the Contact, Appellant testified that as Seven Exes broke from the Race's starting gate, the Horse broke so sharply to the left that Appellant almost "fell off." (H.T. at p. 46-47.) Seven Exes then made significant contact with the number six (6) horse, "I'm a Giraffe," despite Appellant's attempt to "correct" Seven Exes as quickly as possible. (Id. at 47-48.)

Appellant claims he could not have done anything more to avoid the Contact because he supposedly “did everything possible to ride Seven Exes safely as [the Horse] broke from the starting gate.” (Id. at p. 48-49.)

Appellant further testified that he: (1) allegedly rode Seven Exes “appropriately” and acted as safely as he could at all times during the Race; (2) “grabbed [Seven Exes] and pulled [the Horse] to the outside as fast as humanly possible”; and (3) struck Seven Exes upon the leaving the Race’s starting gate. (H.T. at p. 54-55.) Thus, Appellant concludes he should not have been suspended for the Contact, even though he concedes Seven Exes was properly disqualified. (Id. at 51-52.)

B. Summary of Testimony Presented by the CHRB.

In support of its position that Appellant violated Section 1699, the CHRB called the Hon. Kim Sawyer (“Ms. Sawyer”), the Hon. Luis Jauregui (“Mr. Jauregui”), and the Hon. Grant Baker (“Mr. Baker”) to testify on its behalf. Mr. Jauregui, Ms. Sawyer, and Mr. Baker were the on-duty stewards during the Race.

Concerning Ms. Sawyer, she provided the following testimony:

(1) Seven Exes drifted inwards for approximately four strides after the leaving the Race’s starting gate before Appellant attempted to correct the Horse; (2) after attempting to correct the Horse, Seven Exes exchanged a “harder bump” with a rival to her inside knocking Appellant off balance; (3) Appellant had sufficient time to correct Seven Exes before the Contact occurred; and (4) Appellant should have ensured Seven Exes left the Race’s starting gate “straight before getting aggressive.” (H.T. at p. 61-62, 64.)

Concerning Mr. Baker, he offered the following testimony in support of the Ruling:

(1) As Seven Exes left the Race’s starting gate, Appellant struck the Horse while holding the rein with his right hand causing the Horse to “angle inward”; (2) Seven Exes then made contact with her rival to the inside, which in turn caused contact with two other rivals; (3) Appellant rode carelessly and caused the Contact by striking Seven Exes as she left the starting gate and by failing to timely correct Seven Exes’ inward drift; and (4) Appellant should have corrected Seven Exes by the second stride out of the starting gate, but Appellant did not do so until Seven Exes’ fourth stride. (H.T. at p. 72-73.)

Finally, the CHRB called Mr. Jauregui who offered the following testimony:

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(1) There is no evidence that Appellant tried to correct Seven Exes' path until after the Contact occurred; (2) Appellant failed to timely correct Seven Exes as she broke from the Race's starting gate; and (3) there was no indication that Appellant pulled Seven Exes "outward" until after the Contact occurred. (H.T. at p. 81-84.)

VII. DISCUSSION

It is clear the Stewards' unanimous Ruling, that Appellant violated Section 1699, is supported by a preponderance of the evidence. Specifically, Appellant failed to meet his required burden of proof for several reasons.

Initially, the Race replay and testimony admitted into evidence supports the Stewards' Ruling that Appellant acted carelessly by failing to "maintain a straight course leaving the starting gate" causing the Contact. (See Ex. 2, H.T. at p. 61-62, 72-73, 81-82.) Indeed, the evidentiary record unequivocally demonstrates that:

(1) Appellant failed to timely take the necessary corrective action to avoid the Contact despite having sufficient time to do so; (2) Appellant's failure to timely "correct" Seven Exes resulted in the Contact and interfered with three of Seven Exes' Race rivals; (3) Appellant did not put forth sufficient effort to correct Seven Exes' inward movement until after the Contact occurred; (4) Appellant rode carelessly and caused the Contact by striking Seven Exes as she left the starting gate; and (5) Appellant failed to pull on the Horse's right rein in an attempt to correct Seven Exes prior to the Contact occurring. (See Ex. 2, H.T. at p. 61-62, 72-73, 81-82.)

Concerning Appellant's claim that Seven Exes broke inward due to the Horse's left hip "brushing with the [Race's] starting gate," it is unsupported by video evidence. Rather, the Race Replay reveals Seven Exes broke on her "left lead" meaning Appellant should have immediately attempted to correct Seven Exes so as to avoid the Contact. (See Ex. 2.) Instead, and despite Seven Exes breaking inwards, Appellant immediately used his riding crop causing Seven Exes to further drift inwards which ultimately caused the Contact. (Id.) Appellant's argument is unpersuasive for this reason alone.

Concerning Appellant's argument that using his riding crop as Seven Exes broke from the starting gate is allowed, it too is unpersuasive. While Appellant is correct that he can use his riding crop when breaking from the starting gate, it does not mean Appellant is not responsible for any harm caused resulting therefrom. Rather, the opposite is true as Appellant is responsible for any harm or interference caused by his use of the riding crop when breaking from the starting

1 gate, including the Contact.

2 As Ms. Sawyer aptly stated, “there is no rule [prohibiting use of the riding crop when
3 leaving the starting gate], but if a jockey chooses to use the crop leaving the starting gate and it
4 doesn’t work [in the jockey’s favor], then they are putting that into [the Stewards’] hands.” (See
5 H.T. at p. 65.) This Officer agrees with Ms. Sawyer’s statement as does applicable case law. (See
6 e.g. *Leyva v. Garcia* (2018) 20 Cal. App. 5th 1095, 1104 [Explaining that a party is responsible
7 for the harm caused by his or her actions in the context of a negligence claim].)

8 Accordingly, the Stewards’ unanimous Ruling, that Appellant failed “to maintain a
9 straight course leaving the starting gate...causing interference” in violation of Section 1699, is
10 supported by a preponderance of the evidence.

11 **VIII. CONCLUSION**

12 Because admissible evidence supports the Stewards’ Ruling, and because the Ruling is
13 supported by a preponderance of the evidence, Appellant failed to meet the burden of proof
14 necessary to sustain the instant Appeal.

15 WHEREFORE, it hereby recommended that Appellant’s Appeal of SAC 21-0063 be
16 overruled, and that Appellant’s three-day suspension for violating Section 1699 be upheld and
17 reinstated for the reasons stated above.

18 Dated: February 28, 2022



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20 Patrick J. Kane, Esq.
21 Hearing Officer
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