

BEFORE THE CALIFORNIA HORSE RACING BOARD
OF THE STATE OF CALIFORNIA

In the Matter of:

**Appeal of the Board of Stewards Official
Ruling #25, Santa Anita Park Classic Meet,
dated February 16, 2024**

**DIEGO HERRERA
CHRB License #402798**

Case No. SAC 24-0010

DECISION

The attached Proposed Decision is adopted by the California Horse Racing Board as its Decision in the above-entitled matter. The Decision affirms the Board of Stewards Official Ruling #25, Santa Anita Park Classic Meet, dated February 16, 2024.

This matter is hereby remanded to the Board of Stewards to issue a ruling reflecting this Decision.

IT IS SO ORDERED ON September 23, 2024.

Gregory L. Ferraro, DVM, Chairman
California Horse Racing Board

Scott Chaney, Executive Director
California Horse Racing Board

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6 **BEFORE THE CALIFORNIA HORSE RACING BOARD**

7 **STATE OF CALIFORNIA**

8 In the Matter of:

Case No. **SAC 24-0010**

9 Appeal of the Board of Stewards Official
10 Ruling #25, Santa Anita Park Classic Meet,
11 February 16, 2024

PROPOSED DECISION

Hearing Date:
July 3, 2024, at 10:00 a.m.

12 **Diego Herrera, CHRB License #402798**
13 **Appellant**

14 PROPOSED DECISION

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18 This matter was heard on July 31, 2024, by Edward J. Weiss, Esq., a Hearing Officer
19 designated by the California Horse Racing Board, in a Microsoft Teams audio and video
20 conference.
21

22
23 Appellant Diego Herrera (hereinafter “Herrera” or “Appellant”) appeared and was
24 represented by counsel, Bing I. Bush, Esq.
25

26 The California Horse Racing Board (“CHRB” or “Respondent”) was represented by.
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28

PROPOSED DECISION RE: DIEGO HERREA APPEAL OF THE RULING OF THE STEWARDS #25 DATED
FEBRUARY 16, 2024

1 Deputy Attorney General Robert Brodnik.

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3 Herrera and the CHRB are at times below referred to collectively as the “Parties.”
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7 CHRB employees Vince Somma and Bill Glaholt also attended the hearing to provide
8 administrative support.
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11 The proceedings were recorded and transcribed by court reporter Michelle E. Derieg of
12 Weinstein Court Reporters, LLC.

13 **PROCEDURAL BACKGROUND**

14 Herrera is a CHRB licensed jockey, who on February 15, 2024, rode the number 5 horse,
15 ZZYZX, in the third race (1 mile) at Santa Anita Park (“Third Race”). On February 16, 2024,
16 Herrera was summoned by the Stewards for film review of the Third Race, after which the
17 Stewards voted 2-1 to suspend Herrera for three (3) racing days for crossing over without
18 sufficient clearance going into the first turn of the Third Race, causing interference: a violation
19 of CHRB Rule 1699 (Careless Riding). On February 17, 2024, Herrera, through his counsel,
20 filed a notice of appeal. A hearing on this appeal initially was noticed for July 17, 2024, but was
21 continued because Herrera’s counsel experienced technical difficulties logging in and using the
22 audio at the hearing. The hearing on this appeal was continued with the agreement of all parties
23 and was duly noticed for and held by Microsoft Teams on July 31, 2024.
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25

26 **LIST OF ADMITTED EXHIBITS**

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

3 (e) If a jockey rides in a manner contrary to this rule, the mount may be
4 disqualified, and the jockey may be suspended or otherwise disciplined by the Stewards.
5

6 (f) When suspending a jockey for riding contrary to this rule, the Stewards shall
7 issue a suspension of two riding days, and shall issue a suspension greater than the minimum for
8 (1) more than one infraction of this rule by the jockey within any contiguous 60 day calendar
9 period or (2) any infraction which, in the opinion of the stewards, jeopardized the safety of
10 another horse or jockey.
11

12
13 **California Business & Professions Code Section 19517 – Grounds for Board**
14 **to Overrule a Decision of the Stewards**

15 (a) The board, upon due consideration, may overrule any steward’s decision other
16 than to disqualify a horse due to a foul or a riding or a driving infraction in a
17 race, if a preponderance of the evidence indicates any of the following:
18

19 (1) The steward mistakenly interpreted the law.

20 (2) New evidence of a convincing nature is produced.

21 (3) The best interests of racing and the state may be better served.
22

23
24 **CHRB Rule 1761 – Appeal from Decision of the Stewards**

25 (a) From every decision of the stewards, except a decision concerning the
26 disqualification of a horse due to a foul or a riding or driving infraction, an
27 appeal may be made to the Board.
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3 **FACTUAL FINDINGS**
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5 I.

6 On February 15, 2024, Herrera rode the number 5 horse, ZZYZX, in the third race
7 (1 mile) at Santa Anita Park (“Third Race”). He crossed over from the outside to the rail going
8 into the first turn during that race. There was contact between Zzyzx and the number 3 horse.
9 R.T. 66:10-11; Exhibit 3.
10

11 II.

12 The Stewards, by a 2-1 vote, suspended Herrera for “crossing over without
13 sufficient clearance going into the first turn, causing interference; a violation of California Horse
14 Racing Board rule #1699 (Riding Rules – careless riding). Stewards Ruling, February 16, 2024,
15 Exhibit 1. Stewards Baker and Jauregui voted to suspend Herrera for three days. Steward Sawyer
16 voted for issuing Herrera a warning. Stewards Ruling, February 16, 2024, Report of Board of
17 Stewards Exhibit 1 and 2.
18

19 III.

20 Herrera has been a jockey for more than 4 years and has had approximately
21 2,000 mounts during his career. R.T. 10:7-13. It has been more than two years since he has been
22 called into the Stewards’ office. R.T. 19:8-9. Herrera testified that he disagrees with the
23 Stewards’ ruling in this matter. R.T. 11:2-3.
24

25 IV.

26 Herrera crossed over from the outside to the rail in front of three horses going
27 into the first turn of the Third Race. Film of Race 3, Exhibit 3. Herrera testified that he rode
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1 safely at all times and denied that he caused any interference. He testified that he saw that his
2 “filly pricked her ears up as I was coming over and kind of staded and I think made it look a
3 little worse than it was.” R.T. 12:13-15. Herrera’s horse Zzyzx slowed down at what he
4 described in his testimony at an “inopportune” time, but he believed he had sufficient clearance
5 to move his horse toward the rail when he did so. Herrera testified that it was not unsafe to cross
6 over when he began to move toward the rail and used his best efforts to cross over. Herrera
7 looked over his left shoulder before crossing over going into the turn of Race 3. (Video of Third
8 Race 3, Exhibit 3).
9

10
11 V.

12 Herrera testified that he did not ride unsafely at any time. R.T. 17:9-10. He
13 testified there was enough space between his horse and the other horses to cross over safely
14 when he did so. Herrera testified that he looked over his shoulder multiple times “to make sure
15 that everybody was safe behind [him] and I was crossing over with enough space. R.T. 20:11-14.
16 Herrera testified that he “didn’t cut off anybody that that was going to cause them to clip with
17 [his] horse.” R.T. 22:8-9. He testified that the horse to his inside did not pull up due to his
18 actions. R.T. 23:19-24.
19

20 VI.

21 Steward Sawyer has been a CHRB steward since 2005. R.T. 25:13-15. She
22 has been involved in the horse racing industry since 1968. R.T. 25: 21-23. She was a successful
23 jockey whose horses “hit the board” in 50% of her mounts. 25:25-26:15. As a steward, she has
24 reviewed the film of approximately 25,000 races over the course of her career. R.T. 26:21-24.
25

26 VII.
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1 Steward Sawyer testified that her recommendation was to issue a warning
2 rather than imposing a suspension. R.T. 27:11-14. Steward Sawyer explained that she made that
3 recommendation because she believed “there were at least two other factors that played into the
4 incident.” R.T. 27:16-17. Steward Sawyer testified that when Herrera crossed over his horse’s
5 ears pricked up it indicates it sees something and that causes a horse to slow down. R.T. 27:19-
6 21. Steward also cited as a factor that one of horses to the inside that was ridden by jockey
7 Santiago Gonzalez, “who always rides aggressively into the turns” and Gonzales should have
8 “relaxed and stayed where he was.” R.T. 27:16-24. Sawyer also clarified that the reason she
9 recommended giving Herrera a warning was not because she felt he had violated any rules but
10 because the stewards are “instructed” not “give a pass” but are instead supposed to issue at least
11 a warning in situation such as these where conduct during a race is being scrutinized by the
12 Stewards. R.T. 29:20-22. In retrospect, Steward Sawyer testified, that she should have stated her
13 position in the minutes that Herrera should not have received a penalty but elected not to do so.
14 R.T. 30:2-11. Steward Sawyer testified she believed it was not a close decision due to the other
15 factors that led to the incident. R.T. 36:18-20. She believes that Herrera’s horse was “clear until
16 his horse shut down to a degree and the jockey behind him, in his aggressiveness, continued to
17 shove up in there, as kind of a term that [is used].” R.T. 35:5-8.

21 VIII.

22 Steward Grant Baker, a CHRB steward since 2001, testified that in observing the
23 Third Race on February 15, 2024, his attention was drawn to Zzyzx. R.T. 41:1-4. His attention
24 was drawn to Zzyzx because it seemed to him that the three inside rivals in the Third Race had
25 been affected and Steward Baker wanted to see why. R.T. 41:5-8.

27 IX.

1 Steward Baker testified that review of the film of the Third Race led him to
2 conclude that the safe riding rules had been violated. The drone shot of Race 3 (Exhibit 3) at 5
3 minutes 30 seconds (5:30) showed that Herrera moved his horse to the rail without sufficient
4 clearance. (Exhibit 3). Steward Baker testified that more patience and consideration for safety is
5 required. He testified that Herrera rode without the requisite level of care. Safety is paramount.
6 R.T. 42:24-43:1. The purpose of CHRB Rule 1699 is to codify the expectation that riders ride
7 safely. 43:1-6.
8

9 X.
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11 Steward Baker discounted the explanation given by Herrera – including “ear
12 pricking” by the other horse, a defense he has only heard once (1997), testifying that the “film
13 speaks loudest” in justifying the Stewards’ decision. He testified that the testimony that he heard
14 did not change his opinion. R.T. 46:15-21.
15

16 XI.
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18 Steward Baker testified that the angle that Herrera took with his horse did not
19 need to be so “sharp” (R.T. 49:19-20) and that jockeys are asked to be “at least a length and a
20 half clear when crossing over” (R.T. 52:1-2) an amount of clearance that was not evident here.
21

22 X.
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24 The number 1 horse in the Third Race was bumped by Herrera’s horse Zzyzx and
25 turned in. The number 3 horse lost ground when Herrera’s horse crossed over. (Exhibit 3, video
26 at 8:35). Steward Baker believes the actions of Herrera were responsible, and he did not – and
27 still does not – accept Herrera’s explanations and the “film speaks the loudest when making
28 these decisions”. R.T. 46:19-24.

1 XI.

2 Three horses – numbers 1, 3 and 4 -- appeared to have been affected by Herrera’s
3 horse crossing over in the Third Race. Steward Baker testified that the number 3 horse pulled up
4 to avoid a potentially dangerous condition (“clipping heals”).
5

6 XII.

7 Steward Baker opined that “ear pricking” by a horse (getting scared and slowing
8 down suddenly) is tough to decide (R.T. 52:19-21) and he has only heard that defense only rarely
9 since he has been judging races (since 1997) R.T. 46:24-47:4. He testified that the film showed
10 Herrera’s horse coming in from the outside which sets the tone for the whole race and “creates
11 the pressure on inside rivals.” R.T. 48:23-49-1.
12

13 XIII.

14 Steward Jauregi, employed by the CHRB as a steward since 2006 (R.T. 54:18-25)
15 after riding as a jockey on the West Coast for 19 years in 8,000 races (R.T. 55:1-6), testified that
16 “they tell all riders, they have to be clear before crossing over.” R.T. 56:15-16. The drone video
17 (Exhibit 3 at the 5:30 mark) shows that the number 4 horse is forced in because he was on the
18 heels of Herrera’s horse. R.T. 56:15-18. He testified that Herrera’s horse should have gone
19 straight for longer and did not have sufficient spacing when he did so. R.T. 56:20-24. (Steward
20 Baker testified that the number 3 horse potentially could have finished better had this not
21 happened to it.) His actions could have caused a “catastrophic accident”, and this was at the
22 “heel clipping stage” and the number 4 horse had to take affirmative action to avoid an accident.
23 RT. 57:11; R.T. 59:6-9; Exhibit 3 at 10:41.
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26 XIV.
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1 Steward Jauregi testified that there can be a violation of Rule 1699 for interfering
2 with a horse can be heel clipping (R.T. 60:4-10) and Rule 1699 can be violated without changing
3 the results of the race (R.T. 61:9-15).
4

5 XV.

6 Steward Jauregi testified that he listened to the testimony of the other witnesses
7 including Steward Sawyer and Herrera at the appeal hearing and his opinion that Herrera
8 violated Rule 1699 has not changed. He testified that Herrera's angle of cross over was too
9 aggressive R.T. 63:4) and should have gone straight longer (R.T. 63:5). He "totally disagrees"
10 with Steward Sawyer's opinion that the number 4 horse rushed into dangerous ground. R.T.
11 67:25-68:3.
12

13 XVI.

14 Herrera testified that horses are live creatures, there a lot of stuff in the infield at
15 Santa Anita, you cannot just push a button, and the horses "are looking at stuff" (R.T. 72:1-14.
16 He testified he "no control" to have done anything differently and there is a lot to manage... R.T.
17 71:25. He testified that he was at least a length and a half clear when coming across. R.T. 71:23-
18 25. The number 4 horse "continued to move" and there was nothing different he could have
19 done. Herrera believes he rode safely at all times, and his filly was going to be clear by a length
20 and a half. In his rebuttal testimony, Herrera stood by his explanation that his horse's ears
21 pricked and lost momentum, which was the cause of any action taken by the affected horses
22 rather than any unsafe riding on his part. Herrera and Steward Sawyer testified that the number 4
23 horse rode overly aggressively. Steward Sawyer stated that jockey of the number 4 horse was not
24 "called in" by the stewards but should have been for riding overly aggressively. R.T. 75.
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28 XVII.

1 or impeding another horse (see CHRB Rule 1699 (a)) or by riding carelessly (see CHRB Rule
2 1699(c)). There was substantial evidence -- testimonial and video -- from which the stewards could
3 have properly concluded that Herrera either impeded or interfered with the horses to his inside or
4 crossed over carelessly without sufficient clearance do have done so when and how he did so.
5 Hererra provided a plausible explanation for his riding and decision making in the Third Race.
6 That explanation was accepted by and convinced Steward Sawyer, who believes Herrera did not
7 violate Rule 1699 and in fact this was not a close case. However, the two other experienced
8 stewards who found that Herrera interfered with or impeded other horses and/or rode carelessly
9 and unsafely both provided strong and credible justifications for finding a violation of Rule 1699.
10 Steward Jauregi expressed his opinions with great confidence, testifying he strongly disagreed
11 with Steward Sawyer. The explanations of the two stewards in the majority were supported by
12 video of the race from three different angles (Exhibit 3). The video of the Third Race provides
13 substantial evidence that Herrera cut across to the rail too sharply and too soon, affecting the horses
14 to his inside. The explanation of Herrera, supported by Steward Sawyer, while they were seemed
15 plausible and were considered carefully by the Hearing Officer, does not establish by a
16 preponderance to establish that the stewards in the majority misinterpreted the law. In fact, Steward
17 Baker explained that the rule of thumb is there needs to be a length and a half of clearance at the
18 time of crossing over. There was no evidence presented that refuted that. The Hearing Officer is
19 not able to conclude from the film of the race (Exhibit 3) and the testimony of the witnesses that
20 Herrera had one and a half lengths of clearance before crossing over by a preponderance of the
21 evidence.
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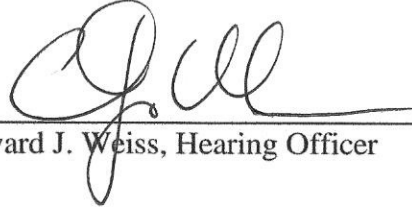
26 Second, Herrera did not carry his burden based on new evidence of a
27 convincing nature (see Business & Professions Code Section 19517 (b)). As noted above,
28

1 Herrera offered his own compelling testimony to explain and justify his decisions and riding in
2 the Third Race. He also presented compelling testimony from Steward Sawyer that supported his
3 explanation. But the two Stewards in the majority – Stewards Baker and Jauregi – also testified
4 and strongly supported and explained their decision with the specific reasons set forth in the
5 Factual Findings. Based on the record in this matter, there was not a sufficient evidence of a
6 convincing nature to overcome the testimony of the stewards in the majority and the Hearing
7 Officer’s own interpretation of the film of the Third Race (Exhibit 3) that establishes by a
8 preponderance of the evidence that the Stewards’ ruling (Exhibits 1 and 2) was incorrect and
9 should be overturned. Overturning the ruling would require substituting the judgment of the
10 Hearing Officer for that of the two experienced stewards, based on their extensive experience
11 and review of the film and reasons for rejecting Herrera’s explanation in order to overturn the
12 stewards’ decision (Exhibits 1 and 2).

15 Third, the best interests of racing would not be served by reversing the ruling
16 of the stewards. Steward Baker testified that safety is “paramount”. Finding of Fact IX. Steward
17 Jauregi testified that there was nearly a catastrophic situation and Herrera caused horses in the
18 Third Race to be at “heal clipping” stage. While Herrera pointed out in his testimony that horses
19 are not cars and are difficult to control and claimed emphatically that he rode with appropriate
20 caution, he did not carry his burden to demonstrate that the best interests of racing would be
21 served by overturning the ruling of the majority of the stewards. There was ample testimony to
22 show that Herrera’s riding could have caused a safety hazard. While he put forth reasons for why
23 he rode carefully and safely and other factors caused the incident, the evidence presented did not
24 establish by a preponderance of the evidence to show the best interests of racing would be served
25 by a different decision.

1 For each, and all of, the foregoing reasons, the Stewards' Ruling #25 to
2 suspend Herrera for three days should be affirmed.

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5 Dated: August 28, 2024



6 Edward J. Weiss, Hearing Officer