BEFORE THE CALIFORNIA HORSE RACING BOARD

OF THE STATE OF CALIFORNIA

In the Matter of: **Appeal of the Board of Stewards Official DMTC Ruling #5, Del Mar Racetrack, July 20, 2024** **Antonio Fresu** **CHRB License #407256**	Case No. SAC 24-0025

DECISION

The attached Proposed Decision is adopted by the California Horse Racing Board in the above-entitled matter. The Decision affirms the Board of Stewards Official DMTC Ruling #5, Del Mar Racetrack, dated July 20, 2024.

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

IT IS SO ORDERED ON November 22, 2024.

Gregory L. Ferraro, DVM
Digitally signed by Gregory L. Ferraro, DVM
Date: 2024.11.22 13:49:22 -08'00'

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

C. Scott Chaney
Digitally signed by C. Scott Chaney
Date: 2024.11.22 13:43:37 -08'00'

Scott Chaney, Executive Director
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BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In The Matter Of: **Appeal of the Board of Stewards' Official Ruling No. 5, Del Mar Racetrack, Dated July 21, 2024** **ANTONIO FRESU** **C.H.R.B. LICENSE NO. 407256** **Appellant.**	Case No.: SAC 24-0025 **PROPOSED DECISION RE: APPEAL OF THE BOARD OF STEWARDS' OFFICIAL RULING NO. 5, DEL MAR RACETRACK, DATED JULY 21, 2024** Hearing Date: September 4, 2024 Time: 11:00 a.m.

INTRODUCTION

This matter arises from an Appeal of the Board of Stewards' Official Ruling No. 5, Del Mar Racetrack, dated July 21, 2024 ("Appeal").

This Appeal came for hearing on September 4, 2024 at 11:00 a.m. via video conference as well as in person at Del Mar Racetrack. Michelle Derieg recorded all testimony presented during the proceeding. Pursuant to California Horse Racing Board Rule 1414, Hearing Officer John B.Herbuveaux ("Hearing Officer") presided over the Appeal.

Appellant Antonio Fresu ("Appellant" or "Fresu") was present and was not represented by Counsel. The California Horse Racing Board ("Respondent" or the "Board") (collectively, with Appellant, referred to as the "Parties") was present and represented by attorney Robert Brodnik ("Brodnik").

The Appeal's evidentiary record closed at the conclusion of the proceedings on September 4, 2024 at approximately 12:10 p.m.

EXHIBITS ADMITTED INTO EVIDENCE

A. Exhibits Entered into Evidence

The Parties jointly entered the following exhibits into evidence:

Exhibit "1"	DVD of the Eleventh Race at the Del Mar Racetrack run July 20, 2024; and
Exhibit "2"	The Del Mar Racetrack Stewards' Ruling No. 5, dated July 21, 2024; and
Exhibit "3"	Notice of Hearing for the instant appeal hearing dated August 8, 2024 signed by Kimberly Herd

LIST OF TESTIFYING WITNESSES

A. Witness Testifying on Behalf of the Appellant

Mr. Antonio Fresu

B. Witnesses Testifying on Behalf of the Respondent

The Board called the following witnesses:

The Hon. Luis Juaregui; and

The Hon. Kim Sawyer; and

The Hon. Grant Baker.

FINDING OF FACTS

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

I

On July 20, 2024 Appellant rode the #10 horse, The Old Nine, in the eleventh race at Del Mar Racetrack and finished in fifth position.

II

Following the finish of the eleventh race the Stewards initiated an inquiry into the cause of an accident in the stretch near the 1/8 pole. The accident resulted in the #11 horse, Fausto, falling and dislodging the jockey, Edwin Maldonado (Maldonado).

III

At the conclusion of the investigation the Stewards determined that the #10 horse, The Old Nine, shifted outward in the stretch forcing the #8 horse, Rotovsky, the eighth place finisher, ridden by jockey Abel Cedillo (Cedillo), racing behind and to the outside of The Old Nine to move further outward. According to the Stewards this action by Cedillo was necessary to avoid the heels of #10 The Old Nine.

IV

The Stewards further determined that when #8 Rotovsky moved outward from the #10 horse, The Old Nine, the movement caused the #11 horse Fausto, racing behind and to the outside of Rostovsky, to clip the heels of Rotovsky causing both horse and rider to fall.

V

As a result of the inquiry the Stewards disqualified the #10 horse, The Old Nine, from fifth position to an unplaced position behind the #11 horse, Fausto, who did not finish the race.

VI

The following day, July 21, 2024 Appellant appeared as ordered by the Stewards to review race 11 from the previous day.

VII

As a result of the film review with the Stewards Fresu was given a five (5) day riding suspension by the Stewards in Del Mar Racetrack ruling #5, dated July 21, 2024 for "failure to maintain a straight course in the stretch, causing interference, resulting in a disqualification from fifth to unplaced; a violation of California Horse Racing Board rule #1699 (Riding Rules - careless riding)."

VIII

Fresu timely appealed Del Mar Racetrack ruling #5 to the California Horse Racing Board pursuant to Section 1761, Title 4, California Administrative Code.

IX

On August 8, 2024 the California Horse Racing Board sent notice to all parties of the instant hearing scheduled for September 4, 2024 pursuant to Section 1414, Title 4, California Administrative Code.

SUMMARY OF EVIDENCE PRESENTED

The Board called the three Stewards who were working at the Del Mar Racetrack on July 20, 2024 and who signed Del Mar official ruling #5, dated July 21, 2024:

Mr. Luis Juaregui (Juaregui), Ms. Kim Sawyer (Sawyer) and Mr. Grant Baker (Baker).

Mr.Luis Juaregui:

Under questioning by Brodnik Juaregui testified that he and the other two Stewards who were working that day, Sawyer and Baker, posted the Inquiry sign following the running of the eleventh race on July 20, 2024. The purpose of the inquiry was to determine the cause of an accident at the top of the stretch which saw the #11 horse, Fausto, fall unseating jockey Maldonado.

As a result of the inquiry Juaregui, Sawyer and Baker unanimously disqualified Fresu's mount, #10 The Old Nine, from fifth position and declared the horse "unplaced".

At a film review with Appellant the following day the Stewards voted to issue ruling #5 which suspended Fresu for five racing days, July 28, August 1, 2, 3, and 4, 2024. The ruling cited a violation of California

Horse Racing Board rule #1699 (Riding Rules) in that Fresu failed to maintain a straight course in the stretch, causing interference, resulting in the disqualification of The Old Nine from fifth to unplaced.

In Juaregui's opinion the suspension was given because Fresu's horse shifted out in the stretch and that action eventually caused the #11 horse, Fausto, to fall. Juaregui stated that when The Old Nine angled out he forced the #8 horse, Rostovsky, ridden by Cedillo out into the path of the #11 horse, Fausto, causing Fausto to clip the heels of Rostovsky and fall.

Juaregui observed that Appellant angled The Old Nine out two paths in the stretch and, in his opinion, if Appellant had taken action to prevent this drift the accident would never have occurred. Juaregui stated that when Fresu failed to make a sufficient effort to correct his mount Fresu was then guilty of careless riding.

Juaregui testified that Fresu was "throwing crosses", i.e. encouraging his horse to run faster with the reins loose, when The Old Nine drifted out. This action, according to Juaregui, allowed Fresu's horse to drift out because Fresu did not have a tight rein on the horse. The loose reins, in Juaregui's opinion, contributed to The Old Nine's outward drift and eventually led to the accident.

Juaregui further stated that, in his opinion, The Old Nine was controllable and Appellant had ample time to correct his horse from floating out. Juaregui also explained, under questioning by Brodnik, that his opinion concerning Fresu's culpability for violating California Horse Racing Board rule #1699 has not changed from the date of the race to the present.

When questioned by the Hearing Officer whether Juaregui thought The Old Nine was clear of the #8 horse, Rostovsky, when The Old Nine drifted out Juaregui responded in the negative.

Ms. Kim Sawyer:

Under questioning by Brodnik Sawyer stated that she viewed numerous angles of the eleventh race on July 20, 2024 while conducting an inquiry into the incident in the stretch and concluded that Appellant, aboard the #10 horse, The Old Nine, was the party responsible for causing the accident which resulted in the #11 horse, Fausto, falling.

Sawyer testified that after the field entered the stretch she observed that, at first, The Old Nine drifted inward toward the #12 horse, One Time Mark, ridden by Kyle Frey (Frey), who was racing ahead of and to the inside of The Old Nine. Sawyer then observed that Fresu and The Old Nine subsequently drifted outward. That outward drift, in Sawyer's opinion, caused the accident.

Sawyer stated that, over the years, jockeys are repeatedly told by the Stewards to steer their mounts with the reins not with the whip. Sawyer testified Appellant's reins were loose when The Old Nine first drifted inward and then out without Fresu taking any corrective measures with the reins.

With respect to the issuance of ruling #5 Sawyer allowed that the decision was not exactly unanimous. Although all three Stewards agreed that Fresu was in violation of rule #1699 Sawyer and Juaregui felt a five day suspension was appropriate while Baker voted to impose a seven day suspension.

When questioned by Brodnik, Sawyer stated that her opinion about Fresu being responsible for the incident had not changed from the day of the accident to the present.

When questioned by the Hearing Office whether there were any rules or guidelines for the Stewards to use when imposing suspensions Sawyer said there is nothing in the rules that assist the Stewards except the mandate that when a suspension is imposed the minimum must be two days.

Sawyer went on to explain that when an incident on the track results in a horse falling or a jockey being unseated the responsible jockey, as a rule of thumb, is looking at a suspension beginning at ten days. Sawyer added that aggravating or mitigating circumstances could raise or lower the penalty from that beginning point.

According to Sawyer, two mitigating circumstances came into play in this case which lowered the penalty to a five day suspension. First, there was not excessive outward movement by The Old Nine which led to the spill and secondly, in her opinion, the movement was not on purpose.

Mr. Grant Baker:

Under questioning by Brodnik, Baker stated his mind had not changed in the intervening months since the ruling was issued regarding Appellant's responsibility for the accident. Baker agreed with Sawyer's assessment that a ten day suspension is an appropriate starting point when a rider is responsible for causing another jockey or horse to fall during a race. In this particular case Baker voted to impose a seven day suspension.

With respect to the tapes of the race Baker felt that the 1/4 pole view gave the best angle to adjudicate the events in the eleventh race on July 20, 2024. Baker's testimony was aligned with Sawyer's in that Baker also saw Appellant and The Old Nine first drift in towards the #12 horse, One Time Mark, who was racing ahead of and to the inside of The Old Nine. Baker added that Fresu's mount then began to move outward into the path of the #8 horse, Rostovsky, ridden by Cedillo. When The Old Nine moved out it forced Cedillo to shift out to avoid the heels of The Old Nine. This action put Rostovsky in the path of The #11 horse, Fausto, and resulted in Fausto clipping the heels of Rostovsky and falling.

Baker testified the ride by Appellant was aggressive and it failed to rise to a level of care for fellow participants as required by the rules.

Appellant was not represented by counsel and testified on his own behalf with direct statements and under questioning by Brodnik and the Hearing Officer.

Mr. Antonio Fresu:

Fresu testified that he has ridden approximately 10,000 races in his career and stated that it is his intention to always ride in a safe manner. Appellant related that the trainer of The Old Nine, Simon Callaghan, told him in the paddock before the race, that the horse was wearing full cup blinkers for the first time. The horse wore blinkers in his previous race but they were "cheaters" and allowed the horse to see too much. Callaghan said the blinker change was necessary because the horse was "lazy".

With respect to the eleventh race incident Fresu said that when his mount, #10 The Old Nine, drifted in towards the #12 horse, One Time Mark, ridden by Frey, at the top of the stretch it was because The Old Nine changed leads. As One Time Mark and The Old Nine raced near each other in the stretch Frey

flagged his mount with the crop in his right hand and this action by Frey caused The Old Nine to shy away from One Time Mark and move to the outside.

Appellant testified that his mount moved outward for only one stride and then he tapped the horse on the right shoulder with both reins in his hand to keep the horse straight and the horse responded by staying on a straight path. Fresu then used his crop on the horse's hindquarters one more time to keep his mount straight.

Appellant stated that he could not steer his horse to the inside because another horse, One Time Mark, was already there. When questioned about his mount drifting out and taking the path of the #8 horse, Rostovsky, Fresu stated that he only drifted out one lane and didn't take Rostovsky's path. Further, Appellant said, if Cedillo felt he was in any danger he could have checked his mount but he didn't, he, Cedillo, just kept on riding. Concerning the #11 horse, Fausto, who fell Appellant stated the horse was weakening when he clipped Rostovsky's heels.

Fresu stated that his actions were not careless because he did not intentionally move The Old Nine to the outside, therefore, in his opinion, he is not guilty of careless riding.

CONTROLLING LAW AND REGULATIONS

Section 1699 Title 4, Division 4, of the California Code of Regulations states:

During the running of the race:

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

(b) A horse which interferes with another horse as defined in subsection (a) may be 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 interference lost the opportunity for a better placing.

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

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

(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 Stewards.

(f) When suspending the jockey for riding contrary to this rule, the Stewards shall issue a minimum suspension of two riding days, and shall issue a suspension greater than the minimum for (1) more than one infraction of this rule by the jockey within any

contiguous 60 day calendar period or (2) any infraction which, in the opinion of the Stewards, jeopardized the safety of another horse or jockey.

Section 19517 Division 8, Chapter 4, Business and Professions Code and Related Laws states:

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

(1) The steward mistakenly interpreted the law.
(2) New evidence of a convincing nature is produced.
(3) The best interests of racing and the state may be better served.

(b) However, any decision pertaining to the finish of a race, as used for the purposes of parimutuel fund distribution to winning ticket holders, may not be overruled. Furthermore, any decision pertaining to the distribution of purses may be changed only if a claim is made in writing to the board by one of the involved owners or trainers, and a preponderance of the evidence clearly indicates to the board that one or more of the grounds for protest, as outlined in the regulations adopted by the board, has been substantiated. The chairperson of the board may issue a stay of execution pending appeal from a steward's decision if the facts justify the action.

DETERMINATION OF ISSUES

In general, when the Stewards post the Inquiry sign following the running of a race they are looking for answers to three questions:

1. Did a foul occur?
2. Was the horse interfered with cost the opportunity at a better placing?
3. Who was at fault for the incident, the horse or the jockey?

In the instant case the Stewards determined the answers to the first two questions on July 20, 2024 when they disqualified The Old Nine from fifth position and deemed him unplaced. With respect to the third question the Stewards held Fresu responsible for the interference when they issued Del Mar ruling #5, dated July 21, 2024 and imposed a five day suspension on the Appellant.

In the Stewards' testimony they absolved the horse as all three felt that The Old Nine was controllable had Appellant used the reins, rather than his whip, to steer his mount.

According to testimony the Stewards felt Fresu rode "aggressively" when the field entered the stretch. In this context aggressive refers to the style Fresu employed in urging his mount to the finish line. Appellant, according to the Stewards, was giving the horse his head, with the reins loose, and he was "throwing crosses" and in order to get to the finish line as fast as possible.

Aggressive riding, in and of itself, is not a violation of the rules as long as the horse or rider do not interfere with a competitor. In this instance the Stewards determined that Fresu's aggressive riding resulted in his failure to control his horse when The Old Nine started to drift out and away from the #12 horse One Time Mark.

Appellant stated that The Old Nine floated in at the top of the stretch when his horse changed leads and got close to One Time Mark. This action was of no consequence in the overall flow of the race except that when The Old Nine began drifting out it led to a chain of events that resulted in the accident.

Fresu testified that One Time Mark's jockey, Frey, flagged One Time Mark with his whip and this action caused The Old Nine to shy away and drift out. Appellant and the Stewards both agree that The Old Nine's outward movement wasn't that extreme but the Stewards determined that Fresu could have corrected the drift and that Appellant failed to do so.

Appellant testified that The Old Nine only drifted out for one or two strides. The tapes, however, show that The Old Nine took three or four strides while floating to the outside which indicates that Fresu had sufficient time to take corrective measures. The tapes also showed that The Old Nine's head was pointed outward as he drifted away from One Time Mark instead of straight ahead which indicates Appellant was not attempting to keep his horse straight..

Appellant testified that he attempted to correct the horse by tapping the horse on his shoulders with his whip and applying the crop to The Old Nine's hindquarters. Sawyer testified that the Stewards require that jockeys use the reins to steer a horse rather than the whip.

Had Appellant used the reins properly to correct the drift one of two possible results would have occurred; Either the outward drift would have ceased or the drift would have continued despite Appellant's efforts. In the first instance the accident would not have occurred while, in the latter, the Stewards would have absolved Fresu of fault and deemed that the horse was uncontrollable despite the jockey's efforts.

When The Old Nine continued to drift outward the horse entered into the path of the #8 horse, Rostovsky, who then had to alter course to the outside to avoid the heels of The Old Nine. Rostovsky then crossed in front of the #11 horse, Fausto. Rostovsky was not sufficiently clear of Fausto which resulted in Fausto clipping the heels of Rostovsky and falling. Since all the incidents occurred because The Old Nine did not maintain a straight course the chain reaction was attributable to The Old Nine, hence the disqualification.

Although Appellant attempted to place the blame on Rostovsky and jockey Cedillo because Cedillo did not check his horse when The Old Nine came over to take Rostovsky's path this argument was not persuasive. Appellant did not properly prevent The Old Nine moving off a straight path and must shoulder the responsibility for the accident.

Since Appellant did not use the reins to correct the Old Nine the Stewards concluded that Fresu did not employ his best efforts and rode contrary to rule #1699, i.e. carelessly, which resulted in the suspension imposed in Del Mar ruling #5.

CONCLUSION

Appellant did not prove, by a preponderance of the evidence, that:

1. The Stewards mistakenly interpreted the law.
2. New and convincing evidence exists.
3. The best interests of racing and the state would be better served.

PROPOSED DECISION

It is hereby recommended that Appellant's appeal of Del Mar Racetrack ruling #5, dated July 21, 2024, be denied and the five day suspension imposed in that ruling for violation of rule #1699 be upheld and reinstated.

Dated: October 3, 2024

John B. Herbuveaux,
Hearing Officer