

BEFORE THE
CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

In the Matter of:	)	
	)	
California Horse Racing Board	)	
v.	)	Case No. 15DM024
KENT DESORMEAUX,	)	
Jockey	)	
_____	)	

STATEMENT OF DECISION

PROCEDURAL BACKGROUND

The California Horse Racing Board (hereinafter “CHRB” or “Complainant”) filed a complaint against jockey Kent Desormeaux (hereinafter “Mr. Desormeaux” or “Respondent”) alleging violation of CHRB rules 1874 (Disorderly Conduct), 1872 (Failure to Fulfill Jockey Agreement), and 1902 (Conduct Detrimental to Racing). The complaint alleged that a breathalyzer test conducted by Board investigators demonstrated that Mr. Desormeux was under the influence of alcohol during the racing card at Del Mar Race Track on July 29, 2015. The complaint also alleged that because of the breathalyzer result, this Board of Stewards removed him from his mounts and therefore Respondent failed to fulfill his riding engagements. This Board of Stewards held a formal hearing into the matter on August 14, 2015. Present at the hearing were this Board (Scott Chaney, Kim Sawyer, and Tom Ward), the Respondent Kent Desormeaux with his attorneys Roger Licht and Andrew Leventhal, CHRB General Counsel Philip Laird representing the CHRB, and CHRB Supervising Investigator Rick Amieva. Court reporter Michelle Derieg recorded the proceedings. We opened the hearing at 11 a.m., took oral testimony from witnesses CHRB Investigator Jim Hamilton, CHRB Investigator Phil Myazaki, and CHRB Supervising Investigator Rick Amieva. We also labeled documentary evidence and entered it into evidence. Both parties made closing statements, the record was closed and we took the matter under consideration.

LIST OF EXHIBITS

CHRB Exhibit 1 Complaint packet which included: face page; CHRB Report of Investigation; Copies of the CHRB Rules 1872, 1874, and 1902; result charts of the first three races on July 29, 2015; Webpage printout pertaining to Intoximeters; DMTD Ruling #014 dated August 3, 2014; and CHRB license history for jockey Kent Desormeaux.

FACTUAL FINDINGS

I

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

II

On July 29, 2015, during the race card at Del Mar Race Track, this Board of Stewards received information that jockey Kent Desormeaux smelled of alcohol.

III

Based on the reliability of the information and the fact that Mr. Desormeaux is on a testing agreement with the CHRB, we requested that the California Horse Racing Board investigative staff perform a breathalyzer test.

IV

CHRB Investigators Hamilton and Kitashima went to the Jockeys' Room and administered the breathalyzer test on Respondent. Two tests were performed in succession, revealing blood alcohol levels of .047 and .041 respectively.

V

This Board of Stewards was notified of the results and we removed Mr. Desormeaux from his remaining two mounts that afternoon.

APPLICABLE RULES AND REGULATIONS

California Horse Racing Board rule 1872. Failure to Fulfill Jockey Agreement.

No jockey engaged for a certain race or for a specified time may fail or refuse to abide by his agreement unless excused by the stewards.

California Horse Racing Board rule 1874. Disorderly Conduct.

No licensee, shall be under the influence of any alcoholic beverage, and/or any illegal substance while performing their respective duties while within the inclosure [sic] of any racing association or fair, simulcast wagering facility, auxiliary stabling facility or Board—approved training facility. Nor shall any licensee conduct themselves in a disorderly or boisterous manner at any time while within the inclosure [sic] of any racing association or fair, simulcast wagering facility, auxiliary stabling facility or Board—approved training facility including but not limited to:

1. Fighting;
2. Threatening, abusive or aggressive behavior toward another person;
3. Any behavior that impedes others from performing their duties; and/or
4. Any other behavior that is detrimental to the public and racing.

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

Reference: Sections 19460 and 19580, Business and Professions Code. HISTORY: 1.

New rule filed 1-9-06; effective 2-8-06.

California Horse Racing Board rule 1902. Conduct Detrimental to Horse Racing.

No licensee shall engage in any conduct prohibited by this Division nor shall any licensee engage in any conduct which by its nature is detrimental to the best interests of horse racing including, but not limited to:

- (a) knowing association with any known bookmaker, known tout, or known felon.
- (b) indictment or arrest for a crime involving moral turpitude or which is punishable by imprisonment in the state or federal prison, when such indictment or arrest is the subject of notorious or widespread publicity in the news media, and when there is probable cause to believe the licensee committed the offenses charged.
- (c) solicitation of or aiding and abetting any other person to participate in any act or conduct prohibited by this Division.

NOTE: Authority cited: Sections 19440 and 19460, Business and Professions Code.

Reference: Sections 19440 and 19460 and 19572, Business and Professions Code.

HISTORY: 1. Amendment filed 2-22-93; effective 3-24-93.

DISCUSSION OF ISSUES

The CHRB alleged three distinct rule violations: disorderly conduct, conduct detrimental to racing and failure to fulfill riding engagements. At the outset, we find that the alleged behavior, even if demonstrated in this case, does not rise to the level of a violation of CHRB rule 1902 (Conduct Detrimental to Racing). None of the subsections of 1902 apply so the only possible violation is that of the preliminary section which states that licensees are prohibited from “engag[ing] in any conduct which by its nature is detrimental to the best interests of horse racing...” We find that the behavior, even if proven to be true, does not rise to this level.

CHRB rule 1872 (Failure to Fulfill Jockey Engagement) was the second regulation that was alleged to have been violated. Respondent argued that he could not have violated the rule because he did not “fail or refuse to ride” the remaining races on the card for which he was engaged. Respondent further argued that he was available to ride but was removed from his mounts by this Board of Stewards. We find this argument unpersuasive. Given the results of the breathalyzer, Respondent was ordered off of his mounts because of his behavior (drinking) and physical state (blood alcohol content). To then claim that he did not fail to abide by his riding contracts is a distinction without a difference. Furthermore, he was never excused from his mounts by this Board of Stewards as the rule also requires. Therefore we find a violation of CHRB 1872.

The CHRB alleged violation of a third rule as well--1874. That is, that “[n]o licensee, shall be under the influence of any alcoholic beverage...” The CHRB argued that any blood alcohol level above zero constitutes a violation of the rule because Respondent was therefore “under the influence.” Respondent’s argument was twofold: (1) the testing protocol was flawed; and (2) even if the blood alcohol level was accurate, this does not constitute “under the influence.” First, while the CHRB’s procedure for measuring blood alcohol level certainly needs to be standardized and improved, there was no evidence presented that indicated that the results of the breathalyzer were unreliable or inaccurate. To the contrary, the breathalyzer machine was calibrated on a regular basis and there was no evidence that it was not functioning properly at the time it was utilized. Similarly, there was no evidence that the test itself was administered improperly. While Respondent did argue that a 15 minute deprivation period was not observed as required by law and recommended by the manufacturer of the machine, no evidence was presented that supported this claim. We find that the test itself was accurate and reliable. The CHRB should, however, standardize its procedure by: (1) requiring training and certification for CHRB personnel regarding breathalyzer administration; (2) regularly calibrate the breathalyzer machine; (3) follow all laws regarding administration of the breathalyzer test including the 15 minute deprivation period; and (4) follow any positive result with a blood test or the equivalent to confirm the initial field test. The second issue regarding CHRB rule 1874 is what blood alcohol level, if any, constitutes “under the influence” as required by the rule for a violation. There is no level delineated in the rule or policy of the CHRB. Respondent argues that the level is that for driving a motor vehicle (.08) or at least that established by the FAA for piloting a commercial airplane, which was incorrectly argued at hearing at .05. On the contrary, the level established for

pilots is actually .04 or higher, which Respondent achieved in the instant case. Respondent's larger argument however, was that there was no level established and therefore no guidance with respect to what constitutes "under the influence." The CHRB took a different view in arguing that "under the influence" should be interpreted in its "plain meaning." It should be noted at this point that the CHRB investigators did not notice behavior or observe any physical signs that Respondent was under the influence of alcohol or other substances. Complainant relied solely on the blood alcohol finding to prove a violation of 1874 (Disorderly Conduct). While we believe that the CHRB should amend the rule or at the very least issue a directive establishing a blood alcohol level that constitutes "under the influence" pursuant to the rule. Absent that direction, Respondent argued that the ambiguity should be interpreted in favor of the licensee. We do not believe there is ambiguity but instead interpret "under the influence" as just that. In other words, the plain meaning of "under the influence" is any alcohol present in one's system. (Even under FAA rules, a blood alcohol level of .04 would be a violation and make the pilot unfit to fly). Therefore we also find that Respondent has violated CHRB rule 1874 (Disorderly Conduct).

CONCLUSION

Mr. Desormeaux was issued a similar ruling last summer (DMTD #014 dated August 3, 2014) in which he was fined one thousand dollars in addition to other requirements. Given last year's ruling and all of the foregoing, we issue the following ruling/decision:

DATED: October 4, 2015.

State of California
CALIFORNIA HORSE RACING BOARD

Official Ruling

of the
Board of Stewards

SANTA ANITA AUTUMN MEET
(Association)

October 4, 2015
(Date)

LATC #013

Jockey KENT DESORMEAUX is fined two thousand five hundred dollars (\$2,500.00)* for violation of California Horse Racing Board rules 1872 (Failure to Fulfill Jockey Agreement) and 1874 (Disorderly Conduct – under the influence of alcohol during the racing card). Furthermore, Mr. Desormeaux is suspended for a period of thirty (30) days. However, the suspension is stayed unless Mr. Desormeaux receives a similar violation in this or any other racing jurisdiction in the period ending with the expiration of his license (February 2, 2018).

LIC#: 209912 exp. 2/2018
CASE#: 15DM024

*Rule #1532 – Fine shall be paid to the Paymaster within seven calendar days from the date of this ruling, or the license of the person upon whom the fine has been imposed shall be suspended.

BY ORDER OF THE
BOARD OF STEWARDS

C. Scott Chaney

Kim Sawyer

Tom Ward