

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:

**Appeal of the Board of Stewards Official
Ruling #22, Watch and Wager LLC-Cal
Expo, dated January 30, 2015**

Case No. SAC 15-0013

GEORGE LUSTER
CHRB License #072614
Appellant

DECISION

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

The Decision shall become effective on June 29, 2015.

IT IS SO ORDERED ON June 25, 2015.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman



Rick Baedeker
Executive Director

1 The proceedings were recorded by Certified Court Reporter Yvonne K. Fenner, CSR #:
2 10909.

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4 **I. PROCEDURAL BACKGROUND**

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6 The issue presented at this hearing, was an appeal from the Cal Expo Board of Stewards
7 Ruling ruling No. 22 Watch and Wager - Cal Expo dated January 30th, 2015. The ruling fined Mr.
8 Luster, the appellant, \$200 for a violation of California Horse Racing Board Rule 1721(J), driving
9 rules. The violation occurred in mid-stretch during the second race on Sunday, January 25th, 2015,
10 when Mr. Luster drove the horse Marion Miss Julie. Marion Miss Julie, the seven horse, came out
11 mid-stretch, hooking wheels with the number four horse, Snoops Electric, which caused a chance
12 at a better placement. Marion Miss Julie was disqualified and placed fifth.

13
14
15 The Cal Expo Board of Stewards unanimously issued the ruling.

16 On February 4, 2015, Appellant Luster filed a timely appeal pursuant
17 to Business and Professions Code Section 19517 and CHRB Rule 1761.

18
19 On March 11, 2015, a Notice of Hearing was issued by Ms. Sharyn Jolly, California Horse
20 Racing Board, for the April 13, 2015 appeal for Appellant.

21 The record was closed, and the matter deemed submitted on April 13, 2015.

22
23 **LIST OF EXHIBITS**

24 **CALIFORNIA HORSE RACING BOARD EXHIBITS:**

25
26 CHRB Exhibit 1: Letter from George Luster, Appellant.

27
28 CHRB Exhibit 2: Board of Stewards' Ruling

In the Matter of George Luster, Appellant

1 CHRB Exhibit 3: DVD of January 25, 2015 second race (retained by Hearing Officer
2 Margarita at end of Hearing)

3 CHRB Exhibit 4: Printout of Rulings for the period 2010 through 2015.
4

5 **APPELLANT'S EXHIBITS:**

6 None Submitted.
7

8 **FACTUAL FINDINGS**

9 **I.**

10 Appellant, George Luster is a licensed trainer with the California Horse Racing Board.

11 **II.**

12 Appellant's California Horse Racing Board Driver license number is 072614.

13 **III.**

14 Appellant, George Luster, drove the horse "Marion Miss Julie" in the second race at Cal
15 Expo on Sunday, January 25, 2015.

16 **IV.**

17
18 The Cal Expo Board of Stewards issued ruling No. 22, Watch and Wager, on January 30th,
19 2015. The ruling fined the Appellant, \$200 for a violation of California Horse Racing Board Rule
20 1721(j), driving rules.

21 **V.**

22 The violation occurred in mid-stretch during the second race on Sunday, January 25th, 2015,
23 when Appellant drove the horse Marion Miss Julie, the seven horse, and came out at mid-stretch,
24 hooking wheels with the number four horse, Snoops Electric, thereby interfering with Snoops
25 Electric.
26

27 **VI.**

1 The hooking of the wheels by Appellant while driving Marion Miss Julie on “Snoops
2 Electric” caused a chance at a better placement.

3 **VII.**

4 Marion Miss Julie was disqualified by the Board of Stewards for the second race at Cal
5 Expo on January 25, 2015.

6 **VIII.**

7 Appellant Luster has filed a timely appeal.

8 **IX.**

9 The Cal Expo Board of Stewards proposed a two hundred dollar (\$200.00) fine of Appellant for his
10 violation of C.C.R. Section 1721 (j).
11

12 **APPLICABLE LAWS AND REGULATIONS**

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14 4 C.C.R. Section 1721, which is entitled, “Driving Rules”, states:

15 No driver during a race shall:

- 16
- 17 (a) Change either to the right or left during any part of the race when another horse is
 - 18 so near that in altering the position of his horse he compels the horse behind him to
 - 19 shorten his stride, or causes the driver of such other horse to pull such horse out of
 - 20 his stride.
 - 21 (b) Jostle, strike, hook wheels, or interfere with another horse or driver.
 - 22 (c) Cross sharply in front of a horse or cross over in front of a field of horses in a
 - 23 reckless manner, endangering other drivers or horses.
 - 24 (d) Swerve in or out or pull up quickly.
 - 25 (e) Crowd a horse or driver by putting a wheel under him.
- 26
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- 1 (f) Carry a horse out or sit down in front of him, take up abruptly in front of other
2 horses so as to cause confusion or interference among the trailing horses, or do any
3 other act which constitutes what is popularly known as "helping."
4 (g) Let a horse pass inside needlessly.
5 (h) Lay off a normal pace and leave a hole when it is well within the horse's capacity
6 to keep the hole closed.
7 (i) Commit any act which shall impede the progress of another horse or cause him to
8 break.
9 (j) Change course after selecting a position in the home stretch, or bear in or out, in
10 such manner as to interfere with another horse or cause him to change stride or break.
11 (k) Drive in a careless or reckless manner.
12 (l) Drive or cause to be driven any unreasonably slow quarters or fractions.
13 (m) Fail to use his best efforts to win.
14 (n) Whip his horse under the arch of the sulky.
15 (o) Drive in such manner as to obtain for himself an unfair advantage.
16

17
18 California Business and Professions Code Section 19517, which is entitled,

19 "Overrule of stewards" decision by board; preponderance of the evidence," states:
20

- 21 (a) The board, upon due consideration, may overrule any steward's decision other
22 than a decision to disqualify a horse due to a foul or a riding or a driving infraction in
23 a race, if a preponderance of the evidence indicates any of the following:
24 (1) The steward mistakenly interpreted the law.
25 (2) New evidence of a convincing nature is produced.
26 (3) The best interests of racing and the state may be better served.
27
28

1 (b) However, any decision pertaining to the finish of a race, as used for purposes of
2 parimutuel fund distribution to winning ticketholders, may not be overruled.

3 Furthermore, any decision pertaining to the distribution of purses may be changed
4 only if a claim is made in writing to the board by one of the involved owners or
5 trainers, and a preponderance of the evidence clearly indicates to the board that one
6 or more of the grounds for protest, as outlined in regulations adopted by the board,
7 has been substantiated. The chairperson of the board may issue a stay of execution
8 pending appeal from a steward's decision if the facts justify the action.
9

10
11 4 C.C.R. Section 1761, which is entitled, "Appeal from Decision of Stewards,"

12 states:

13
14 (a) From every decision of the stewards, except a decision concerning the
15 disqualification of a horse due to a foul or a riding or driving infraction, an appeal
16 may be made to the Board.
17

18 (b) Appeals shall be made in writing, stating the reason or reasons for the appeal, and
19 shall be signed by the appellant, appellant's attorney, or appellant's representative.

20 Appeals shall be received by a Board employee at any of its offices, not later than
21 seventy-two (72) hours from the date of the decision of the stewards unless the Board
22 for good cause extends the time for filing.
23

24 (c) An appeal shall not affect a decision of the stewards until the appeal has been
25 sustained or dismissed or a stay order issued by the Chairman.
26

1 **DISCUSSION OF ISSUES**

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3 **I. APPLICABLE BURDEN OF PROOF**

4 The Appellant had the burden of proof to refute, by a preponderance of evidence
5 standard, that the ruling issued by the Cal Expo Board of Stewards, was such that
6 any of the following occurred: (1) The steward mistakenly interpreted the law, (2) new
7 evidence of a convincing nature is produced, or (3) the best interests of racing and the state
8 may be better served.¹

9 The Appellant presented no evidence that could be construed as refuting, by a
10 preponderance of evidence standard, that the ruling issued by the Cal Expo Board of
11 Stewards, was such that any of the following occurred: (1) The steward mistakenly interpreted the
12 law, (2) new evidence of a convincing nature is produced, or (3) the best interests of racing and the
13 state may be better served.

14
15 **II. APPELLANT LUSTER'S CONDUCT DURING THE SECOND RACE AT**
16 **CAL EXPO ON JANUARY 25, 2015 VIOLATED 4, CALIFORNIA CODE**
17 **OF REGULATIONS SECTION 1721(j)**

18 4 C.C.R. Section 1721 (j), prohibits a driver from changing course after selecting a
19 position in the home stretch, or bear in or out, in such manner as to interfere with another
20 horse or cause him to change stride or break. During the second race, the evidence clearly
21 reveals that the Appellant changed course after selecting a position in the home stretch.
22 During Appellant's testimony, Appellant admitted to changing course in the home stretch
23 (RT: pp.20). The change by Appellant, after he had selected a position in the home stretch,
24 clearly interfered with Snoops Electric, causing Snoops Electric to break. The Appellant
25 presented no evidence at the hearing controverting such a charge. In fact, Appellant testified
26

27 ¹ Reference is made to Business and Professions Code Section 19517.

1 that he “bumped” the other horse (Snoops Electric) (RT: pp. 18 – 19). Appellant then
2 admitted that his wheel touched the wheel of the other horse (RT: pp. 19). Appellant then
3 admitted that there was a touching of his wheel with the wheel of the other horse (RT: pp.
4 19). Appellant also admitted that when he was going down the stretch, “...that was when we
5 hit...” (RT: pp. 20). Appellant’s testimony during the hearing is in direct conflict with
6 Exhibit 1, the letter submitted by Appellant dated February 4, 2015, addressed to the
7 California Horse Racing Board. In Exhibit 1, Appellant specifically stated, “...there was no
8 contact between my horse and any other horse...” This statement in Exhibit 1 is in direct
9 conflict with Appellant’s statements during the hearing (RT: pp. 18-19).
10

11 Subsequently, during his testimony, Appellant stated, “... You know, when you're in the
12 stretch and you're supposed to keep your horses straight. So I come out to try to get around, but
13 they're moving just a little bit over, so I had to stop. I had to stop driving and just sit there. When I
14 pulled out, I seen him coming. I stopped driving. And that is when we hit the -- they hit the bump.
15 He went on past me...” (RT: pp. 20).

16 During the course of Appellant’s testimony, several times he viewed and re-viewed the
17 video of the January 25, 2015, second race, Exhibit 3. Appellant’s testimony was such that absent
18 his pure conclusionary statements, that he did not violate 4 C.C.R. Section 1721, was not supported
19 with any factual basis or evidence to controvert, by a preponderance of evidence standard, the
20 Stewards’ decision.

21 This Hearing Officer deemed the testimony of Cal Expo Steward Wayne Oke to be very
22 credible. The testimony of Mr. Oke was such that he demonstrated extensive experience and
23 qualifications to serve as a Steward and render a decision as a Steward (RT: pp. 5 – 16).

24 Appellant’s testimony was both self-serving and not supported by any evidence to overturn
25 or overrule the Stewards decision by any evidence, let alone the applicable standard of
26 preponderance of evidence, as set forth in California Business and Professions Code Section
27 19517.
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1 this Hearing Officer's opinion that the best interest of racing and the state will not be better
2 served if the Stewards' decision is overturned.

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4 Therefore, based on the aforementioned facts and circumstances, it is this Hearing Officer's
5 proposed ruling that the Board of Stewards proposed two hundred dollar (\$200.00) fine of Appellant
6 George Luster be upheld and AFFIRMED.

7
8 DATED: 5/11/15

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10 
11 RICHARD P. MARGARITA, ESQ.
12 Hearing Officer

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