# BEFORE THE CALIFORNIA HORSE RACING BOARD

# STATE OF CALIFORNIA

In the Matter of:

FITNESS FOR LICENSURE

**GAIL RUFFU**
**Applicant**

Case No. SAC 11-0009

## DECISION

The attached Proposed Decision is hereby adopted by the California Horse Racing Board as its Decision in the above-entitled matter. Applicant is eligible to apply for a California Horse Racing Board Trainer's license. Applicant must pass a complete Trainer's examination conducted by the Board of Stewards prior to issuance of a license.

The Decision shall become effective on July 26, 2011.

IT IS SO ORDERED ON July 21, 2011.

CALIFORNIA HORSE RACING BOARD
Keith Brackpool, Chairman

Kirk E. Breed
Executive Director

# BEFORE THE HORSE RACING BOARD

# STATE OF CALIFORNIA

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| In the Matter of : | |
| FITNESS FOR LICENSURE | CHRB Case No. 11SA029 |
| | Case No. SAC 11-009 |
| GAIL RUFFU | |
| Respondent. | |

## PROPOSED DECISION

This matter was heard on May 16, 2011, by Richard "Bon" Smith, a Hearing Officer designated under California Horse Racing Board (CHRB) Rule 1414 (Appointment of Referee) at Los Angeles, California.

William Westermann, Supervising Special Investigator, and Patricia Nevonen, Deputy Attorney General, represented the CHRB.

J. Curtis Edmonsen, Attorney at Law, represented Respondent Gail Ruffu (Ruffu), who also was present.

One witness, trainer Duff Shidaker, presented testimony in support of Ruffu.

The proceedings were recorded by Court Reporter Barbara Weinstein.

At the hearing, oral and documentary evidence were presented; and upon the counsels having prepared and presented closing briefs, the matter was submitted for decision on June 14, 2011.

## PROCEDURAL BACKGROUND

On January 28, 2011, Ruffu applied for a CHRB license as a thoroughbred trainer. This application was refused under CHRB Rule 1489 on grounds of moral turpitude or acts in connection with horseracing which violate a trust or duty. The refusal was based on

Ruffu's conduct during 2004 that was the subject of a hearing and appeal and which resulted in a license suspension in 2005. The matter was subsequently adjudicated before an Administrative Law Judge with the Office of Administrative Hearings in late 2009. That hearing resulted in a decision, adopted by the Board and effective January 21, 2010, that Ruffu's application be denied. She was eligible to apply again one year later, and she did so.

Upon the refusal of her current application, Ruffu requested and was granted a fitness hearing, noticed and scheduled for May 16, 2011. On that day, the hearing convened at approximately 9:40 am at the Ronald Reagan State Office Building, in accordance with the notice supplied to all parties. The CHRB submitted documentary evidence and oral testimony relevant to the matter. The Respondent also presented relevant documentary evidence and oral testimony. After the hearing, upon receipt of post-hearing briefs from both sides, the record was closed and the matter deemed submitted as of June 14, 2011.

## LIST OF EXHIBITS

### CHRB Exhibits

1–B Order of Board of Stewards, dated January 14, 2005
1–C Proposed Decision in Appeal, CHRB Case No. SAC 05-003
1–D Decision Adopting Proposed Decision, dated November 3, 2005
1-E Official Ruling of the Board of Stewards, dated December 11, 2005
1-F Notice of Refusal of License and attached documents, dated November 19, 2008
1-G Declaration/Appeal, dated November 19, 2008
1-H Decision of CHRB re: Fitness for Licensure, Case No. SAC 10-005
1-I Application for Licensure, dated January 28, 2011
1-J Notice of Refusal of License, dated January 28, 2011

### Respondent Exhibits

1-8 Gail Ruffu's Resume
1-10 Respondent's Declarations of Support

## DISCUSSION

Summary of Evidence and Contentions

1. Kirk E. Breed brought this complaint solely in his official capacity as the Executive Director of the CHRB.
2. Respondent Gail Ruffu is an applicant for a horse trainer's license. On January 29, 2011, CHRB refused that application.
3. Past findings of fact as well as the decisions generated from steward and Administrative hearings in 2005 and 2009 are relevant to this hearing.

4. No known criminal or civil sanctions against the Respondent by a California court of law relative to this matter were brought to the attention of the Hearing Officer.
5. Per repeated references to existing case law as presented in past hearings, the burden lies on the Respondent to provide a preponderance of evidence to show that she is fit and qualified to be a licensed horse trainer.
6. Complainant's Statement of Issues repeats findings from the 2005 and 2009 hearings and ties the current refusal to the 2009 decision adopted on January 21, 2010, the key section of which stated in part:

   > ...Respondent expressed no remorse for her past conduct, nor did she present any evidence that she has been rehabilitated therefrom. As Respondent has presented no evidence of rehabilitation from her past conduct, she has not demonstrated her fitness for licensure.

   Potentially of significance in the document that accompanied the decision was the Respondent's comment that she would "...make use of available civil remedies..." rather than resort to the direct personal action that resulted in her license suspension.
7. Respondent counsel attempted to raise questions as to the validity of the determination that the Respondent's unrefuted acts constituted moral turpitude under CHRB law/rule and further, that subsequent case law – Jamgotchian vs. Slender – would validate her ownership authority during the 2004 act of taking the horse Urgent Envoy from its trainer's barn. Additionally, Respondent's initial argument was that a simple recitation of the previous decision would result in an interminable loop of refusal/denial for relicensure.
8. Respondent provided documents from supporters indicating she was a competent and able horsewoman with whom they would entrust their horses. Witness Duff Shidaker, a licensed trainer, provided informed testimony to that effect as well.
9. The original 2005 decision demanded the return of the horse Urgent Envoy. That has never occurred. Between claims and counterclaims (and deadlines made and/or missed) among the various ownership interests in Urgent Envoy, the legal outcome of ownership/location of the horse seems unlikely to be resolved anytime in the foreseeable future.
10. The original decision suspended Ruffu's trainer license from 2005 through 2008. The 2009 decision indicated that her lack of demonstrated remorse or rehabilitation was grounds to sustain the denial of license at that time.
11. Respondent, in a post-hearing brief, argued that seven years (the actual time of the license suspension and unlicensed period subsequent will be six years in December 2011) should be sufficient punishment and that the dispute over Urgent Envoy has run its course in court without sanction or resolution.
12. Complainant countered that Respondent has never complied with previous decisions that directed return of the horse, and that she has shown no remorse and/or rehabilitation. However, in what manner such contrition would be manifested was not made clear.

In weighing the arguments, those most credible seem to be the sufficiency of punishment on the Respondent's side, and the lack of remorse/rehabilitation on the Complainant's side. Respondent arguments re definition of moral turpitude and of ownership under Jamgotchian are without merit.

## CONTROLLING LAW

As cited in the 2005 decision, and repeated in the 2009 decision, California Code of Regulations, Title 4, Rule 1489 (g) authorizes the CHRB denial of a license to anyone "who has committed an act involving moral turpitude…or acts in connection with horse racing…which were fraudulent or in violation of a trust or duty." Both of those decisions indicate such an act occurred. However, there is no indication that this section would serve as a perpetual ban on licensure, especially in a case where no criminal or civil sanctions have been shown to have been levied. In rule and in application, there is also no express indication as to what would constitute remorse and/or rehabilitation. Clearly, if the Respondent had followed the original directive and returned the horse, such a remedy would have been demonstrated. However, given that such a result was never directed by a criminal or civil decision, its probability seems nil at this time. Moreover, given the change in wording of the CHRB decision adopting the 2005 proposed decision, it appears the Board was deferring to the courts for a final decision as to the horse's disposition. Such a decision did not and apparently will not occur. Further, given that the Respondent has expressly indicated that she would not pursue such a tack in a similar situation, a repeat seems remote. In that light, and in spite of the acknowledged fact that the Respondent took a horse that was not hers to take and acted under false premises, the time for a regulatory resolution has come.

CHRB has a specific directive (Executive Directive 1-09) for cases wherein criminal sanctions have resulted from actions of licensees/applicants. Its terms include a period of five years after the end of a probationary period before application can be considered in felony cases. However, because no such sanctions resulted in this case, terms of the directive do not apply.

The Respondent's time away from training race horses within a racing enclosure is approaching six years (the Steward's order suspending her license was effective December 2005 through September 2008. She has been unlicensed and off the track since then.) In that time, significant changes have occurred in the rules and regulations concerning the care and training of race horses. As such, her knowledge, skills, and abilities may have eroded and/or may not be current, any of which would be cause to consider remediation before any future licensure.

## CONCLUSION/PROPOSED DECISION

Given the foregoing, it is recommended that Respondent Gail Ruffu be permitted to apply for licensure by the CHRB in the category of trainer pursuant to CHRB Rule 1481 (Occupational Licenses and Fees). It is further recommended that this licensure be contingent upon Ms. Ruffu's successful completion of such examination as the Board deems sufficient under the terms of CHRB Rule 1491 (Examinations).

DATED: June 30, 2011

Richard "Bon" Smith
Hearing Officer
California Horse Racing Board

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