

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:
FITNESS FOR LICENSURE

HAROLD SINNE
Applicant

Case No. SAC 12-0043

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 January 22, 2013.

IT IS SO ORDERED ON January 17, 2013.

CALIFORNIA HORSE RACING BOARD
David Israel, Acting Chairman

A handwritten signature in black ink, appearing to read 'Kirk E. Breed', with a large, stylized loop at the end.

Kirk E. Breed
Executive Director

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In the Matter of: _____)
FITNESS FOR LICENSURE)
)
)
HAROLD SINNE)
Appellant)
_____)

Case No. SAC 12-0043

PROPOSED DECISION

This matter was heard on October 22, 2012 by C. Scott Chaney, a Hearing Officer designated under California Horse Racing Board rule 1414 (Appointment of Referee) at Santa Anita Race Track in Arcadia, CA.

The Appellant, formerly licensed jockey and exercise rider Harold Sinne (hereinafter "Appellant" or "Mr. Sinne"), represented himself.

The California Horse Racing Board (hereinafter "CHRB") was represented by CHRB Investigator Phillip Miyazaki.

Also present at the hearing were witnesses on the behalf of the Appellant – Darin Hirasuna, Bob Fletcher, Doug Campbell, and Tyler Baze. The proceedings were recorded by court reporter Michelle Derig.

PROCEDURAL BACKGROUND

On May 17, 2012, Appellant applied for a CHRB license in the license category of exercise rider. On the license application, he truthfully answered "yes" to the following question: "[h]ave you ever been convicted of an offense by a court?" Mr. Sinne also indicated to CHRB Investigator Miyazaki that he had been discharged from parole on February 10, 2012 pursuant to a felony drug conviction. On that same day, the CHRB issued a document entitled "Notice of Refusal of License" to Mr. Sinne. That document stated two reasons for the denial of a CHRB license: (1) conviction of a crime punishable by imprisonment in a State or Federal prison and (2) unqualified to engage in the occupation for which Mr. Sinne applied. This refusal is not discretionary pursuant to CHRB Directive 01-09 which establishes a CHRB Investigator's authority in approving licenses for individuals with criminal histories. Mr. Sinne then appealed the denial and requested a formal fitness for licensure hearing. Both parties were noticed and the hearing was scheduled for October 22, 2012. On that day, the hearing was called to order at approximately 9:00 am in accordance with the notice supplied to all parties. The

CHRB submitted documentary evidence relevant to the matter, while the Appellant presented oral testimony in the form of witnesses, including himself, as well as documentary evidence. The record was closed and the matter deemed submitted that same day.

LIST OF EXHIBITS

CHRB Exhibit #1 – CHRB document containing several different documents pertaining to this hearing: Notice of Hearing, Report of Investigation, Notice of Refusal of License, CHRB Directive 01-09 dated January 6, 2009 and called “License Refusals and Denials,” a summary of Appellant’s convictions, a letter from Harold Sinne, a printout indicating date of discharge from parole, a letter from Parole Agent D. Hazama, a letter from Winners’ Foundation executive director Bob Fletcher, a letter from Paul Catalano (house manager at Grandview Foundation), a letter from Emmons Sebenius (counselor at Grandview Foundation), a letter from Darin Hatsuna (program director at Grandview Foundation), three certificates indicating completion of life skills related classes, Dolphin Trucking School certification showing completion of Class A Commercial course, several pages of cards indicating attendance at drug and alcohol recovery meetings, a letter from Dolphin Trucking School indicating enrollment and good standing, a certificate and letter from the National Center for Construction Education and Research indicating completion of a learning series program, two forms entitled “Supplemental Job Displacement Nontransferable Training Voucher Form,” a complete multi-page printout from the Department of Justice showing all of the past criminal proceedings against Appellant, and a letter from Douglas Campbell (executive director of Grandview Foundation).

Appellant Exhibit #1 – A letter from Mr. Sinne’s Alcoholics Anonymous sponsor Joseph Cichy.

Appellant Exhibit #2 – A letter from Maria Galvez at Dolphin Trucking School confirming employment and good standing.

FACTUAL FINDINGS

I

On or about July 9, 2010, Mr. Sinne was convicted of two felonies – Possession of a Controlled Substance and Vandalism, for which he was sentenced 32 months in prison in California.

II

That conviction was the last in approximately 14 felony and misdemeanor convictions that began in 1987. Most of these convictions related in some way to drug possession or use. By his own estimation, Mr. Sinne spent approximately ten years in jail and prison.

III

Mr. Sinne was released from prison on September 13, 2011 after serving 15 months of the 32 month sentence. He was discharged from parole on February 10, 2012 based in part on his participation in a drug treatment program while in prison and his participation in a residential drug treatment program at Grandview Foundation after his release.

IV

Since his release from prison, Mr. Sinne completed the residential drug treatment program but has remained at that facility in the capacity of House Manager. He has not used illegal drugs or alcohol in approximately 19 months and has no positive tests during that period. Mr. Sinne also secured gainful employment.

V

On May 17, 2012, Mr. Sinne applied for an exercise rider's license from the CHRB.

VI

On that same date, in accordance with the CHRB Rules and Regulations and pursuant to a CHRB directive on these matters, Mr. Sinne was refused a license due to his felony conviction and recent of release from parole.

VII

Mr. Sinne appealed the denial; that appeal is being heard here.

APPLICABLE LAWS AND REGULATIONS

California Horse Racing Board rule 1489. Grounds for Denial or Refusal of License.

The Board, in addition to any other valid reason, may refuse to issue a license or deny a license to any person:

- (a) Who has been convicted of a crime punishable by imprisonment in a California state prison or a federal prison, or who has been convicted of a crime involving moral turpitude. . .

California Horse Racing Board Directive 01-09 "License Refusals and Denials," dated January 6, 2009.

A license applicant *will not* be considered for licensing and will be refused or denied a license based on the following minimum criteria:

- ...
- b. Felony Convictions (except as noted above subsection "a"): A license applicant is not eligible for licensing for a term of (5) years following the termination of the parole and/or probation of the felony conviction.

...
The Investigative Staff has no discretionary authority to approve a license if the applicant does not meet the aforementioned time lines relative to disqualifying criminal convictions. . .

DISCUSSION OF ISSUES

The issue in this matter is whether the terms of CHRB Directive 01-09 should be waived with respect to Mr. Sinne's parole. As an initial matter, the CHRB investigative staff appropriately applied the conditions set forth in Directive 01-09 and denied Mr. Sinne's initial license application based on his last felony conviction and the recent (less than five years) discharge from parole. Directive 01-09 is very specific in restricting the ability for the CHRB investigators to grant licenses under these circumstances. It is clearly intended to require that license applicants with recent criminal history be subjected to more scrutiny (and by extension, more due process) than an individual investigator's assessment as to whether these individuals would be good candidates for licensure. That additional scrutiny is the purpose of this hearing.

Clearly the CHRB has an interest in withholding licenses from certain individuals in order to regulate the industry in a way that promotes fairness, integrity and safety. For example, individuals who do not possess the requisite skills are precluded from procuring trainers' licenses; individuals not employed by associations are prevented from acquiring racing official or valet licenses; and more to the point, those who have been convicted of crimes related to book making cannot be licensed by the CHRB. It is this concern with criminal history and its potential deleterious effect that led to the promulgation of Directive 01-09. Its application, however, is less clear. As stated earlier, the CHRB would certainly not want to license a convicted bookmaker or race fixer, but probably has no interest in barring individuals with minor traffic infractions. The gray area of criminal convictions between these two extremes is more difficult, but is guided by the conditions set forth in the Directive. Applied strictly in this case, Mr. Sinne would be precluded from applying for a license until February of 2017 (five years after the discharge of his parole). It is the purpose of this hearing to determine if the evidence indicates that a waiver of all or part of the time that Mr. Sinne is precluded from applying for a CHRB license is appropriate.

A review of Appellant's history and the evidence presented at hearing seems relevant here. Evidence presented at hearing indicates that Mr. Sinne acquired a CHRB license in 1987. It appears that Mr. Sinne held either an exercise rider license or jockey license off and on (it was suspended at times) until 2008 when it was terminated. While this license history is somewhat murky, what's clear is Appellant's criminal history. It is both clear and extensive; in fact, it is the most extensive that this hearing officer has seen in a fitness for licensure hearing. As noted earlier, Mr. Sinne has approximately 14 criminal convictions since 1987 and by his own estimation, has spent about ten total years in jail or prison since the first conviction. Mr. Sinne was candid in explaining that all of these were in some way related to his addiction to drugs and alcohol. While he explained that marijuana, cocaine and alcohol were part of this addiction,

methamphetamine was his drug of choice. During this time, Mr. Sinne has attempted sobriety and rehabilitation many times, in an out of prison, with little success, until now.

Just as I have never seen such an extensive criminal history, I have similarly not experienced such a dramatic turnaround and such profound support in a hearing of this nature. At some point in his last stint in prison, the record indicates and Appellant's own testimony explains, that he simply became tired of his addiction and the life that followed, and decided to change. He started his sobriety in prison (no small feat) and has continued it to this day. While in prison, he began drug and alcohol rehabilitation programs and earned several certifications pertaining to life skills. After prison, he went to Grandview Foundation which is an in-house drug treatment facility. After completion of that program, he has remained there as an employee—a house manager. Not only did Darin Hirasuna (Program Manager at Grandview) and Doug Campbell (Executive Director at Grandview) think highly enough of Appellant to hire him, but gave glowing testimony at the hearing. In an interesting perspective, fellow house managers and Grandview residents themselves added their support. Jockey Tyler Baze, a resident at Grandview, appeared to testify and credited Appellant in large part for his sobriety. Finally, Bob Fletcher (Executive Director of the Winners Foundation) was enthusiastic to have Mr. Sinne in the program, not so much for his continued need for daily meetings, but to have a leader and example for other clients struggling with addiction. Mr. Sinne has been sober for 19 months and appears poised to successfully complete another nineteen months. While he currently has two jobs, his trucking school employment concludes in February and Mr. Sinne would like to begin exercising horses at that time. The CHRB did not make a recommendation with respect to the outcome of this hearing.

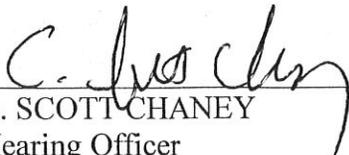
Ultimately, these types of cases are risk/benefit analyses with respect to whether this is the type of individual that the CHRB should license given their criminal past and potential future. On the one hand, Appellant's history is both extensive and serious, and he does present some risk should he acquire a license; on the other hand, Appellant's future seems to be different and hopeful. Frankly, at hearing despite Appellant's history, it was hard to ignore Mr. Sinne's testimony, demeanor, and the tremendous support he garnered. Given that support, on balance, it seems that this may be the type of individual for which CHRB Directive 01-09 should be waived. Given his history, however, this should not be undertaken without caution or restrictions.

CONCLUSION/PROPOSED DECISION

Given all of the foregoing, it is recommended that Harold Sinne be permitted to apply to be licensed by the CHRB in the license category of exercise rider pursuant to CHRB Rule 1481 (Occupational Licenses and Fees). It is further recommended, however, that said license, pursuant to CHRB Rule 1485 (License Subject to Conditions and Agreements), be contingent upon several restrictions: (1) Mr. Sinne must enroll and abide by the terms set forth by the Winners Foundation; (2) Mr. Sinne must be required to submit to a drug test before obtaining said license and sign a drug testing agreement with the CHRB and remain on that contract for however long he holds a CHRB license; (3) Mr. Sinne must be approved by the Safety Steward confirming his ability to fulfill the requirements of an exercise rider; (4) Mr. Sinne may only hold an exercise rider's license

for a period of at least three years and after such time any other application for a CHRB license other than exercise rider be subjected to a fitness for license hearing; and (5) that Mr. Sinne's license be considered probationary for however long he holds it, and that any stewards' rulings against Mr. Sinne be grounds for automatic revocation.

DATED: November 30, 2012.


C. SCOTT CHANEY
Hearing Officer