BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:
FITNESS FOR LICENSURE

JOSE JESUS SALDIVAR
Appellant

Case No. SAC 13-0015

ORDER DIRECTING ADDITIONAL EVIDENCE

Attached is a copy of the Proposed Decision in the above-titled matter submitted to the California Horse Racing Board ("Board"). The Board considered the Proposed Decision in this Matter during the Closed Session of the regularly noticed Board Meeting of August 22, 2013.

By vote of the Board, the application for licensure of Jose Jesus Saldivar in the Proposed Decision was rejected, and referred back to the same Hearing Officer for additional evidence. The Hearing Officer is to prepare a Proposed Decision consistent with the additional evidence.

IT IS SO ORDERED
Dated: August 26, 2013

Jacqueline Wagner
Assistant Executive Director

For CALIFORNIA HORSE RACING BOARD

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of: FITNESS FOR LICENSURE JOSE JESUS SALDIVAR Appellant	Case No. SAC 13-0015

PROPOSED DECISION

This matter was heard in its entirety on June 19, 2013, beginning at 10:00 am, by Richard "Bon" Smith, a Hearing Officer designated under California Horse Racing Board (CHRB) Rule 1414 (Appointment of Referee) at CHRB Headquarters in Sacramento, California.

Barbara Chimero, Senior Special Investigator represented the CHRB.

Appellant Jose Jesus Saldivar (Saldivar) was present and represented himself.

Lance Grenamyer, licensed exercise rider (CHRB lic. #261181) appeared as a witness on behalf of Saldivar.

The proceedings were recorded by Court Reporter Yvonne Fenner.

At the hearing, oral and documentary evidence were presented to the official record. In addition, the complete official record was left open pending the receipt of a letter of support/program completion from Saldivar and transmitted by the CHRB; that letter was received and the record was closed and considered for decision on July 15, 2013.

PROCEDURAL BACKGROUND

On March 21, 2013, Saldivar applied for and was refused a CHRB license in the license category "Exercise Rider – TB". On the license application, Saldivar truthfully answered questions #1 "Have you been convicted of ANY public (criminal) offense within the past 36 months?" and #3 "Has any of your license(s) to participate in racing EVER been revoked or suspended for more than 10 days?" On his Criminal History Information form (CHRB 4a), he noted that he was serving probation for a petty theft from 2009, and

had completed DUI classes for a felony hit and run (property damage) incident in 2010. His probation was to end August 2013. The Notice of Refusal of License (CHRB 83) stated, "You have unlawfully engaged in or have been convicted of possession, use, or sale of a narcotic, dangerous drug, or marijuana." Saldivar was also told that under the tenets of CHRB Directive 01-09, he would not be eligible for licensure until five years after his satisfactory completion of probation. Saldivar appealed that rule and requested the fitness for licensure hearing that this report documents.

LIST OF EXHIBITS

State Exhibit #1 – CHRB document including Report of Investigation (dated August 12, 2011), Official Ruling of the Board of Stewards (Pacific Racing Association (PRA), dated September 25, 2011), and Application for Renewal or Replacement License, Criminal History Information, and Notice of Refusal of License (all dated March 21, 2013).

Appellant Exhibit #1 – Notice of Refusal of License (dated March 21, 2013), personal letter from Saldivar requesting relief from license suspension, PC 1000 (Drug Diversion Program) Completion Form, letters of support and promises of riding engagements from CHRB licensed trainers Monty Meier (CHRB #115057) and Sheldon Paldanius (CHRB #266274).

FACTUAL FINDINGS

I

Exercise rider Jose Jesus Saldivar, aka Jose DeJesus Martinez, held a valid CHRB license until September 25, 2011, when PRA Board of Stewards Ruling No. 25 suspended that license through its term pursuant to CHRB rule #1900 for violation of CHRB rule #1489 (a) (c) and (h).

II

Saldivar had plead or been convicted of misdemeanor burglary and petty theft in separate cases dating to 2009 and 2010 in Santa Clara and San Mateo Counties.

III

In February 2010, Saldivar was arrested and convicted for felony Reckless Driving, DUI drugs and alcohol, Hit and Run (property damage), and Resisting Arrest. He was sentenced to three years formal probation, fines and restitution. His probation concludes in August 2013.

IV

On June 16, 2010, Saldivar submitted a license renewal application to the CHRB on which "NO" was checked to the question "Have you ever been convicted of ANY public (criminal) offense within the past 36 months?" That renewal was accepted and approved

until notice was received of an arrest notification from the California Department of Justice, thus initiating CHRB Case #11GG0126 and ultimately resulting in the stewards' suspension.

V

Saldivar reapplied for a license on March 21, 2013, and was refused as noted above. His formal request for a fitness hearing was received by the CHRB on March 26, 2013.

APPLICABLE LAWS AND REGULATIONS

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...: A license applicant is not eligible for licensing for a term of five 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...

CASE SUMMARY

At issue in this matter is whether the terms of Directive 01-09 should be waived with respect to Mr. Saldivar's felony conviction. The directive is quite clear in its intent that investigators and licensing staffers will not make those decisions. A higher level of scrutiny and at minimum a consideration of the circumstances by an independent review agent provides the appellant the opportunity for due process and a thorough hearing.

The CHRB has a regulatory responsibility and interest in withholding licenses from individuals who might negatively affect the industry's fairness, integrity, and safety. Defined skill levels must be demonstrated prior to licensing in riding and training capacities. Known bookmakers are not eligible for any licensure. Those who pose a documented threat to the safety of the human or equine participants have no standing as licensees. Less clear is the CHRB's responsibility where less directly related offenses are at question. A strict interpretation and application of the Directive in this instance would result in Mr. Saldivar being precluded from applying for a license until August 2018 (five years after the conclusion of his probation.) Thus this hearing is to determine whether the Board should consider waiving all or part of the time Saldivar is precluded by Directive 01-09 from applying for licensure.

Other than the behaviors that lead to his refusal, Mr. Saldivar has maintained a clean record at the track. He asserts that he never performed his exercise rider duties under the influence. He acknowledged his guilt in the criminal activities and earlier misstatements on his application, and showed evidence that he is in process of making full restitution for the damages he caused. Fellow exercise rider Grenamyer spoke to Saldivar's character and reliability as an exercise rider. Letters from trainers Meier and Paldanius indicated they would put him up on some horses to gallop as soon as he might return, Paldanius going so far as to say, "…we need for him to be back." Barry Cass of Axis Community Health signed the PC 1000 Drug Diversion Program Completion Form. Nora Lee, Northern California Winners Foundation Supervisor, cited the continuing progress Mr. Saldivar while completing a contract with the foundation to meet regularly, complete a 12-step program, and maintain sobriety. She indicated he had fully complied with all requirements. In his statement at the hearing, Mr. Salidvar indicated he would accept any restrictions or contingencies the Board determined to be in its interest if he could just get back to riding. Finally, the CHRB Investigator spoke to his ability as an exercise rider and good standing in the enclosure.

The decision here represents a risk/benefit of licensing this individual. On one hand, a crime serious enough to be regarded as a felony was committed by the appellant. He later omitted that information on an application for licensure. This raises questions as to his judgement and integrity. On the other, he has completed every available program to show his rehabilitation and sobriety, has regularly worked to support his family and to repay his debts and restitution, and has the support of the racing community. The history of second chances the Board has provided is replete with such stories.

CONCLUSION/PROPOSED DECISION

The appellant presented evidence of his remorse and rehabilitation. He is in process of making full restitution for his fines, penalties, and property damages. His continued sobriety, while in no way guaranteed by his recent past, seems more likely with the relationship he has developed with the Winners Foundation, and with the demands and discipline necessary to be a successful exercise rider. Given the foregoing, it is recommended that Appellant Jose Jesus Saldivar's request to be eligible for licensure be approved once he has documented that he has been released from probation.

DATED: August 7, 2013
Sacramento, California

Richard "Bon" Smith
Hearing Officer
California Horse Racing Board