

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Appeal from the Board
of Stewards Order Requiring Double Jockey
Fees in the Breeders' Cup Distaff Race at the
Del Mar Race Track on November 3, 2017

Case No. SAC 17-0025

CHARLES FIPKE
OWNER
CHRB License #243335

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 22, 2018.

IT IS SO ORDERED ON June 21, 2018.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman


Rick Baedeker
Executive Director

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8 **BEFORE THE CALIFORNIA HORSE RACING BOARD**

9 **STATE OF CALIFORNIA**

10 **In the Matter of:**

Case No.: SAC 17-0025

11 **Appeal of the Board of Stewards Order**
12 **Requiring Double Jockey Fees in the**
13 **Breeders' Cup Distaff Race at the Del Mar**
14 **Thoroughbred Club on November 3, 2017**

PROPOSED DECISION REGARDING
THE APPEAL OF THE BOARD OF
STEWARDS ORDER REQUIRING
DOUBLE JOCKEY FEES IN THE
BREEDERS CUP DISTAFF ON
NOVEMBER 3, 2017

15 **CHARLES FIPKE**

16 **Owner**

17 **CHRB License No. 243335**

18 **I. INTRODUCTION**

19 This matter arises from an appeal of the Board of Stewards Order requiring Appellant
20 Charles Fipke ("Appellant") to pay "double jockey fees" in the ninth race, the Longines
21 Breeders' Cup Distaff, run at the Del Mar Thoroughbred Club on November 3, 2017 (the
22 "Appeal").

23 Appellant appeared via telephone and was represented by Darrel Vienna, Esq. The
24 California Horse Racing Board ("Respondent" or the "CHRB") was present and represented by
25 Supervising Attorney General Elisabeth Frater, Esq. Joel Rosario ("Rosario") was not present
26 and was represented by Roger H. Licht, Esq.

27 Pursuant to California Horse Racing Board Rule 1414, Hearing Officer Patrick J. Kane
28 ("Officer") presided over this Appeal.

This Appeal came for hearing on March 20, 2018 at 11:00 a.m. at Santa Anita Race

1 Track located in Arcadia , California 91007. Michelle Derieg recorded all testimony presented
2 during this proceeding.

3 This matter's evidentiary record closed at the conclusion of the proceedings on March
4 20, 2018 at approximately 3:50 p.m., with the exception of Appellant's post hearing motion and
5 the CHRБ's opposition thereto.

6 **II. EXHIBITS ADMITTED INTO EVIDENCE**

7 **A. Exhibits the CHRБ Entered into Evidence.**

8 The CHRБ entered the following exhibits into evidence:

- 9 Exhibit "1" REPORT OF THE BOARD OF STEWARDS, 11/01/17;
10 Exhibit "2" DOUBLE JOCKEY FEE (FOREVER UNBRIDLED) TIME
11 LINE;
12 Exhibit "3" 2017 BREEDERS' CUP WORLD CHAMPIONSHIPS ENTRY
13 FORM;
14 Exhibit "22" ORDER GRANTING STAY, DATED NOVEMBER 7, 2017;
15 Exhibit "23" REPORT OF THE BOARD OF STEWARDS;
16 Exhibit "24" D.M.T.D. RULING NO. 022; and
17 Exhibit "25" E-MAIL FROM P. MIYAZAKI TO P. LAIRD, DATED
18 NOVEMBER 11, 2017.

19 **B. Exhibits Rosario Entered into Evidence.**

20 Rosario entered the following exhibit into evidence:

- 21 Exhibit "4" PRINTOUT FROM MR. ANDERSON'S IPAD, NOVEMBER 3,
22 2017.

23 **C. Exhibits Appellant Entered into Evidence.**

24 Appellant entered the following exhibits into evidence:

- 25 Exhibit "5" REPORT OF THE BOARD OF STEWARDS, PAGE 1, RULING
26 NO. 311;
27 Exhibit "6" REPORT OF THE BOARD OF STEWARDS, PAGE 3, RULING
28 NO. 316;

1 Exhibit "7" REPORT OF THE BOARD OF STEWARDS, PAGE 2, RULING
2 NO. 278;
3 Exhibit "8" REPORT OF THE BOARD OF STEWARDS, PAGE 4, RULING
4 NO. 06;
5 Exhibit "9" REPORT OF THE BOARD OF STEWARDS, PAGE 8, RULING
6 NO. 078;
7 Exhibit "10" REPORT OF THE BOARD OF STEWARDS, 8/02/17, RULING
8 NO. 021;
9 Exhibit "11" REPORT OF THE BOARD OF STEWARDS, PAGE 2, RULING
10 NO. 011;
11 Exhibit "12" REPORT OF THE BOARD OF STEWARDS, PAGE 1, RULING
12 NO. 003;
13 Exhibit "13" REPORT OF THE BOARD OF STEWARDS, PAGE 5, RULING
14 NO. 041;
15 Exhibit "14" REPORT OF THE BOARD OF STEWARDS, PAGE 5, RULING
16 NO. 030;
17 Exhibit "15" REPORT OF THE BOARD OF STEWARDS, PAGE 2, RULING
18 NO. 118;
19 Exhibit "16" REPORT OF THE BOARD OF STEWARDS, PAGE 1, RULING
20 NO. 67;
21 Exhibit "17" REPORT OF THE BOARD OF STEWARDS, PAGE 1, RULING
22 NO. 26;
23 Exhibit "18" REPORT OF THE BOARD OF STEWARDS, PAGE 4, RULING
24 NO. 23;
25 Exhibit "19" REPORT OF THE BOARD OF STEWARDS, PAGE 2, RULING
26 NO. 15;
27 Exhibit "20" REPORT OF THE BOARD OF STEWARDS, 2/21/10, RULING
28 NO. 041;

1 Exhibit "21" ASSOCIATION OF RACING COMMISSIONERS'
2 INTERNATIONAL MODEL RULES OF RACING, PAGES 225
3 AND 233.

4 **III. LIST OF TESTIFYING WITNESSES**

5 **A. Witnesses Testifying on Behalf of Appellant.**

6 Appellant called the following the witnesses:

- 7 • The Honorable Grant Baker;
8 • The Honorable Charles Scott Chaney;
9 • Charles Edgar Fipke; and
10 • Vladimir Cerin.

11 **B. Witnesses Testifying on Behalf of Joel Rosario.**

12 Rosario called the following witness:

- 13 • Ronald Anderson.

14 **C. Witnesses Testifying on Behalf of the CHRB.**

15 The CHRB did not call any witnesses during this proceeding.

16 **IV. FACTUAL FINDINGS**

17 After analyzing and admitting all exhibits into evidence, admitting the testimony
18 provided during the Hearing, this Officer makes the following findings of fact:

19 **A. Forever Unbridled is Entered into the Breeders' Cup Distaff.**

20 **I.**

21 The Longines Breeders' Cup Distaff (the "Distaff") is a Grade I Stakes restricted to
22 "fillies and mares, three years old and upwards." (See, Ex. 4.) The Distaff carried a
23 \$2,000,000.00 purse and was scheduled to be run on November 3, 2017 at a distance of one
24 mile and one eighth over Del Mar's main track. (Id.) The Distaff is arguably the most
25 important race for fillies and mares in the world. (The Hearing Transcript ("H.T.") at p. 98.)

26 **II.**

27 Trainer Dallas Stewart ("Stewart"), the trainer of record for racehorse Forever Unbridled
28 ("Forever Unbridled" or "the Horse"), entered the Horse in the Distaff on October 29, 2017 and

1 named Rosario as the Horse's jockey. (H.T. at p. 131; Ex. 3.) By entering the Horse, Stewart
2 represented that he was authorized to enter Forever Unbridled on behalf of Appellant and
3 further agreed to "be bound by the conditions" contained on the entry form. (Ex. 3.)

4 III.

5 Before running in the Distaff, Rosario had ridden Forever Unbridled in seven of her
6 eight previous races, including guiding the Horse to victory in the Personal Ensign Stakes, a
7 Grade I race with a purse of \$750,000.00 run at Saratoga Race Course in August 2017 (the
8 "Personal Ensign"). (H.T. at p. 168.) A few days after Forever Unbridled's victory in the
9 Personal Ensign, Rosario's jockey agent, Ronald Anderson ("Anderson"), contacted Stewart to
10 ask if Rosario had the "call" to ride the Horse in the Distaff. (H.T. at p. 169-170.) Stewart
11 unequivocally confirmed that Rosario had the "call." (Id.) Anderson confirmed that Rosario
12 would ride Forever Unbridled multiple times between the Personal Ensign and the Distaff.
13 (H.T. at p. 170.)

14 B. Rosario is "Taken Off" Forever Unbridled after Being Entered in the Distaff.

15 IV.

16 On the morning of October 30, 2017, Appellant contacted Stewart to inform him that he
17 had given the "call" on Forever Unbridled to jockey John Velazquez ("Velazquez") earlier that
18 morning (H.T. at p. 131, 135.) In response, Stewart noted that Appellant had already named
19 Rosario as Forever Unbridled's jockey. (H.T. at p. 147; Ex. 3.) Stewart changed Forever
20 Unbridled's jockey from Rosario to Velazquez on October 30, 2017. (Id. at p. 132.)

21 Appellant decided to replace Rosario with Velazquez on October 30, 2017 because he
22 believed Rosario poorly rode another one of his horses, Verve's Tail, on October 28, 2017,
23 costing that horse a victory. (H.T. at p. 129-130, 144.)

24 C. Anderson Learns that Rosario will not Ride Forever Unbridled in the Distaff.

25 V.

26 On October 30, 2017, at approximately 11:15 a.m., PDT, Stewart contacted Anderson
27 via phone and informed him that: (1) Rosario would no longer be riding Forever Unbridled in
28 the distaff and that Velazquez was replacing him; and (2) Anderson should contact the Board of

1 Stewards (the “Stewards”) to discuss Rosario being taken off Forever Unbridled after being
2 named as the Horse’s rider at the time entries were taken. (H.T. at p. 131, 170.)

3 This was the first time Anderson learned of Rosario being “taken off” Forever
4 Unbridled. (Id.) Anderson contacted Rosario to inform him he would no longer be riding
5 Forever Unbridled. (Id. at p. 173.) This too was the first time Rosario learned he no longer
6 would ride Forever Unbridled in the Distaff. (Id.)

7 **VI.**

8 At the time Anderson and Rosario learned that Rosario had been “taken off” Forever
9 Unbridled, Anderson did not have an opportunity to secure another mount for Rosario in the
10 Distaff because: (1) Rosario had been “taken off” Forever Unbridled at the “11th hour”; and (2)
11 every other horse running in the Distaff had already committed to another jockey. (H.T. at p.
12 171.) As a result, Rosario was precluded from the business opportunity to earn any portion of
13 the Distaff’s \$2,000,000.00 purse. (Id. at p. 98.)

14 **VII.**

15 Immediately after his conversation with Stewart on the morning of October 30, 2017,
16 Anderson contacted steward Charles Scott Chaney (“Steward Chaney”) to inform him that: (1)
17 “Rosario had been given the “call” on Forever Unbridled before “drawing the Distaff”; and (2)
18 Appellant “had changed his mind” and decided to name Velazquez. (H.R. at p. 59-60, 170-
19 171.) Mr. Chaney instructed Anderson to contact fellow steward Grant Baker (“Steward
20 Baker”) who was on duty at that time and in the steward’s office. (Id. at p. 61.)

21 **VIII.**

22 Later on October 30, 2017, Anderson met directly with Steward Baker to discuss his
23 complaint that Stewart gave Rosario the “call” to ride Forever Unbridled in the Distaff and that
24 Appellant changed his mind earlier that day and changed Forever Unbridled’s jockey to
25 Velazquez (hereinafter referred to as the “Complaint”). (H.T. at p. 16-17; Ex. 2.)

26 **IX.**

1 After speaking with Anderson about the Complaint, Steward Baker contacted Stewart by
2 phone before the Breeders' Cup Distaff Draw. (H.T. at p. 20.) During this conversation,
3 Stewart stated that he "gave Rosario the 'call'" on Forever Unbridled. (H.T. at p. 28.)

4 **X.**

5 At approximately 5:00 p.m. on October 30, 2017, Stewards Chaney and Baker attended
6 and presided over the Breeders' Cup Draw at Powerhouse Park in Del Mar, California. (H.T. at
7 p. 58-59, Ex. 2.) When the Distaff's post positions were drawn, Velazquez was named as
8 Forever Unbridled's jockey. (H.T. at p. 58-59.)

9 **D. The Stewards Investigate Anderson's Complaint.**

10 **XI.**

11 On November 1, 2017, Steward Kim Sawyer ("Steward Sawyer"), Steward Baker, and
12 Steward Chaney (collectively, the "Stewards") contacted Stewart by phone. (H.T. at p. 64, Ex.
13 2.) Stewart again confirmed that he gave Rosario the "call" to ride Forever Unbridled in the
14 Distaff. (H.T. at p. 104, Ex. 2.)

15 **XII.**

16 On November 1, 2017, the Stewards contacted Appellant to discuss Anderson's
17 Complaint. (H.T. at p. 66.) The Stewards inform Appellant that Stewart gave Rosario the
18 "call" to ride Forever Unbridled in the Distaff. (H.T. at p. 29, 66, Ex. 2.) Appellant stated that
19 he decided Velazquez would ride Forever Unbridled in the Distaff. (H.T. at p. 29.) Appellant
20 agreed that Stewart named Rosario as Forever Unbridled's jockey when he entered the Horse in
21 the Distaff. (Id. at p. 30-31.) Appellant further stated he had not given any jockey the "call" to
22 ride Forever Unbridled until personally asking Velazquez on the morning of October 30, 2017.
23 (H.T. at 129-130, Ex. 1.)

24 The Stewards informed Appellant of the possible consequences of replacing Rosario
25 with Velazquez, including being fined and/or ordering Appellant to pay a "double jockey fee."
26 (Id. at p. 29-30, 66.) The Stewards further stated that if Appellant named Rosario as Forever
27 Unbridled's Rider before 8:00 a.m. on November 2, 2017, they would neither issue a fine or
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1 order he pay double jockey fees. (Id. at p. 30, 34, Ex. 2.) Appellant refused to change Forever
2 Unbridled's jockey back to Rosario. (Id. at p. 30, Ex. 2.)

3 **XIII.**

4 After investigating the allegations of Anderson's Complaint, the Stewards unanimously
5 determined that Rosario had the "call" on Forever Unbridled. (H.T. at p. 103-104.)
6 Accordingly, on November 1, 2017, the Stewards issued the following unanimous decision (the
7 "Double Jockey Fees Decision") that:

8 Joel Rosario had been given the call on the horse [Forever Unbridled], and
9 therefore was precluded from looking for other mounts in the race. We informed
10 all parties involved that Mr. Rosario would be awarded a double jockey fee,
11 meaning he would earn whatever Mr. Velazquez earns in the race ("Double
12 Jockey Fees"). (Ex. 1.)

11 **E. Forever Unbridled Wins the Distaff.**

12 **XIV.**

13 On November 3, 2017, Forever Unbridled won the Distaff. (H.T. at p. 111.) The
14 Stewards' Double Jockey Fees Decision required Appellant to pay Rosario \$110,000.00, the
15 same amount Velazquez earned in winning the Distaff with Forever Unbridled. (Id. at p. 112.)

16 **XV.**

17 On November 4, 2017, Appellant contacted the Stewards and requested a meeting to
18 discuss the Double Jockey Fees Decision after the conclusion of the Breeders' Cup races that
19 day. (Ex. 2.) The Stewards informed Appellant that they would be available to meet with
20 Appellant the morning of November 5, 2017. (Id.) However, Appellant could not meet with
21 the Stewards on November 5, 2017 because he "couldn't change his flight," which departed the
22 same day. (H.T. at p. 132-133.)

23 **F. The Appeal's Procedural Background.**

24 **XVI.**

25 On November 7, 2017, the CHRB granted Appellant's request for a stay. (Ex. 22.)

26 **XVII.**

27 On March 14, 2018, after analyzing the party's respective briefs, this Officer issued an
28 Order finding that Appellant has the burden of proving facts necessary to overturn the Stewards'

1 Double Jockey Fees Decision. A copy of the March 14, 2018 Order is attached to this Proposed
2 Order as Exhibit 26.

3 **XVII.**

4 On April 3, 2018, Appellant filed a motion seeking to vacate the Stewards' Double
5 Jockey Fees Decision based on arguments that the Stewards violated Appellants' right to
6 procedural due process (the "Motion"). On April 17, 2018, the CHRB filed an Opposition to
7 Appellant's Motion, which Rosario joined. On May 1, 2018, Appellant filed a Reply Brief in
8 Support of his Motion. Copies of the party's respective filings are attached to this Proposed
9 Order as Exhibit 27.

10 A Proposed Decision on Appellant's Motion is found below.

11 **V. STANDARD OF REVIEW AND CONTROLLING LAW**

12 Business and Professions Code Section 19517(a) provides the overall framework of the
13 Appeal, and states, in relevant part, that:

14 The board, upon due consideration, may overrule any steward's decision...if a
15 preponderance of the evidence indicates any of the following: (1) The steward
16 mistakenly interpreted the law; (2) new evidence of a convincing nature is
produced; or (3) the best interests of racing and the state may be better served.

17 Appellant has the burden of proving facts necessary to sustain the appeal. (See, Cal.
18 Code Regs. Tit. 4 § 1764 ["The burden shall be on the appellant to prove the facts necessary to
19 sustain the appeal."].)

20 "Preponderance of the evidence means evidence that has more convincing force than
21 that opposed to it." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal. App. 3d 314, 324.)
22 "Preponderance of the evidence means what it says, viz., that the evidence on one side
23 outweighs, preponderates over, is more than, the evidence on the other side, *not necessarily in*
24 *number of witnesses or quantity*, but in its effect on those to whom it is addressed." (Id. at 325
25 [citations omitted].)

26 Because this Appeal concerns whether the Stewards mistakenly interpreted the law and
27 whether the decision at issue "serves the best interests of racing and the state," this Officer
28 applies the preponderance of the evidence standard of review.

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VI. DISCUSSION

A. Appellant's Request for Judicial Notice.

Appellant requests this Officer take judicial notice of twenty-one (21) discrete facts concerning decisions by the Board of Stewards at race meets across California and certain provisions of the California Code of Regulations. Appellant's Request for Judicial Notice is attached to this Proposed Decision and made part of the administrative record as Exhibit 28.

For the reasons set forth below, Appellant's Request for Judicial Notice is granted in part and denied in part.

"Evidence Code, section 451, provides in mandatory terms that certain matters designated therein must be judicially noticed..." (*Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal.4th 1057, 1063.) "Evidence Code section 452, subdivision (c) permits [a] court to take judicial notice of the records and files of a state administrative board." (*Fowler v. Howell* (1996) 42 Cal. App. 4th 1746, 1750, citations omitted.) "[T]he taking of judicial notice of the official acts of a governmental entity does not in and of itself require acceptance of the truth of factual matters which might be deduced therefrom, since in many instances what is being noticed, and thereby established, is no more than the existence of such acts and not, without supporting evidence, what might factually be associated with or flow therefrom." (*Mangini supra*, 7 Cal.4th at 1063-1064.)

Here, Appellant requests this Officer take judicial notice of twenty-one (21) exhibits consisting of: (1) the official reports of the Board of Stewards from race meets across California (Exhibits 1-17); (2) the Association of Racing Commissioners' International Model Rules of Racing (Exhibit 18); and (3) various provisions of the California Code of Regulations Exhibits 19-21).

Concerning Appellant's request that this Officer take judicial notice of Exhibits 1-18, these same exhibits were admitted into evidence without objection and became part of this Appeal's administrative record as Exhibit 1, and Exhibits 5 through 21. Because these exhibits were moved into evidence, Appellant's request for judicial notice as to Exhibits 1-18 is denied as being cumulative and irrelevant to this Appeal. (See e.g., *Mangini, supra*, 7 Cal.4th at 1063

1 ["Although a court may judicially notice a variety of matters...only relevant material may be
2 noticed."], see also, *Ragland v. U.S. Bank National Assn.* (2012) 209 Cal. App. 4th 182, 194
3 ["While we may take judicial notice of [certain documents], we decline to do so because we
4 conclude [these documents are] not relevant to any issue raised on appeal."].)

5 Appellant's request that this Officer take judicial notice of Exhibits 19-21 is granted as
6 said exhibits are provisions from the California Code of Regulations applicable to this Appeal,
7 which must be judicially noticed. (See Cal. Evid. Code § 451(a) ["Judicial notice shall be taken
8 of the following...[t]he decisional, constitutional, and public statutory law of this state and of the
9 United States...].)

10 Accordingly, Appellant's Request for Judicial Notice as to Exhibits 1 through 18 is
11 denied while Appellant's Request for Judicial Notice as to Exhibits 19 through 21 is granted for
12 the reasons set forth above.

13 **B. The Stewards Correctly Determined that Rosario was Given the Call to Ride
14 Forever Unbridled and Correctly Ordered a Double Jockey Fee.**

15 Initially, the Stewards correctly determined that Rosario had the "call" on Forever
16 Unbridled and that by removing Rosario as the Horse's jockey on October 30, 2017, Appellant
17 breached the agreement which Appellant's agent, Stewart, entered into with Rosario.

18 Appellant claims he did not give Stewart authority to name Rosario as Forever
19 Unbridled's jockey, (H.T. at p. 131.) However, whether Appellant gave Stewart such authority
20 is irrelevant as the evidence demonstrates Stewart has actual authority to name Rosario as
21 Forever Unbridled's jockey.

22 "Actual authority can arise as a result of the principal's conduct that causes the agent
23 reasonably to believe that the principal consents to the agent's act on the principal's behalf."
24 (*Chicago Title Ins. Co. v. AMZ Ins. Services, Inc.* (2010) 188 Cal. App. 4th 401, 426.) "Actual
25 authority is defined by Civil Code section 2316 to be such as a principal intentionally confers
26 upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself
27 to possess." (*Correa v. Quality Motor Co.* (1953) 118 Cal. App. 2d 246, 251.) "Knowledge of
28

1 the custom on the part of the contracting parties is presumed from the fact that they are in the
2 business or trade in which the custom exists.” (Id.)

3 Here, Appellant concedes that Stewart has the authority to enter into agreements with
4 jockeys or their agents to ride Appellant’s horses. (H.T. at p. 139-140.) Moreover, the evidence
5 demonstrates that trainers, such as Stewart, commonly enter into agreements with a respective
6 jockey’s agent to ride a certain horse as opposed to an owner giving a jockey a “call” to ride a
7 certain horse. (Id. at p. 164-165.)

8 Accordingly, Stewart acted with actual authority in giving Rosario the “call” to ride
9 Forever Unbridled in the Distaff. (See e.g., *Ripani v. Liberty Loan Corp.*, (1979) 95 Cal. App.
10 3d 603, 611 [“An agent will normally have the authority to do everything necessary or proper
11 and usual in the ordinary course of business for effecting the purpose of his agency.”], see also,
12 Code Regs. Tit. 4 § 1894 [“A trainer represents the owner relative to horses which he is training
13 in the matter of entries, declarations, and the naming of jockeys or drivers, unless the owner
14 notifies the stewards in writing to the contrary.”].)

15 And, the evidence separately supports a finding of ostensible authority. “[O]stensible
16 authority arises as a result of conduct of the principal which causes the third party reasonably to
17 believe that the agent possesses the authority to act on the principal’s behalf.” (*Tomerlin v.*
18 *Canadian Indemnity Co.* (1964) 61 Cal.2d 638, 643, see also, Civ. Code, § 2300.) “Ostensible
19 authority may be established by proof that the principal approved prior similar acts of the
20 agent.” (*United States Credit Bureau, Inc. v. Cheney* (1965) 235 Cal.App.2d 357.) “[W]here the
21 principal knows that the agent holds himself out as clothed with certain authority, and remains
22 silent, such conduct on the part of the principal may give rise to liability.” (*Gulf Ins. Co. v. TIG*
23 *Ins. Co.* (2001) 86 Cal.App.4th 422, 439.)

24 Here, by entering into an agreement with Anderson allowing Rosario to ride Forever
25 Unbridled in the Distaff, Stewart acted in accordance with Appellant’s authorization. (H.T. at p.
26 139-140, 164-165.) Indeed, Stewart had previously given “calls” without consulting Appellant
27 numerous times without any objection from Appellant. (H.T. at p. 138-139.) Appellant even
28 testified that Stewart had the authority to enter into such agreements. (Id.)

1 The fact Appellant stated he “expected to be consulted” on who would ride his horses
2 “in a big race like the Breeders’ Cup” is unpersuasive because Appellant: (1) authorized
3 Stewart’s similar acts in the past; and (2) knew Stewart held himself out as having authority to
4 give “calls” to jockeys and their agents. (H.T. at p. 139-140, 164-165.) In fact, Anderson
5 testified he never spoke with Appellant about naming Rosario to ride Forever Unbridled, or any
6 of Appellant’s horses, as he always received the “call” solely from Appellant’s trainers. (H.T. at
7 p. 170-171.)

8 Thus, Stewart separately acted with ostensible authority in giving Rosario the “call” on
9 Forever Unbridled. (*Chicago Title Ins. Co.*, supra, 188 Cal. App. 4th at 426 [“The evidence also
10 supported a finding of ostensible authority.”].)

11 Because Stewart was authorized to give Rosario the “call” on Forever Unbridled, the
12 Stewards correctly ordered Appellant to pay Double Jockey Fees.

13 As a result, Appellant is bound by Stewart’s act of entering into an agreement with
14 Anderson giving Rosario the “call” on Forever Unbridled. “A principal is bound by acts of his
15 agent, under a merely ostensible authority, to those persons only who have in good faith, and
16 without want of ordinary care, incurred a liability or parted with value, upon the faith thereof.”
17 (See Cal. Civ. Code § 2334.)

18 Specifically, the evidence unequivocally demonstrates that Anderson acted neither in
19 bad faith nor “without want of ordinary care” in entering into the agreement with Stewart. (H.T.
20 at p. 138-140, 164-165, 170-171.) By relying on Stewart’s authority to give Rosario the “call,”
21 Rosario was precluded from the business opportunity of earning any portion of the Distaff’s
22 \$2,000,000.00 purse. (Id. at p. 98.) Indeed, Rosario parted with \$110,000.00, the amount
23 Velazquez earned in winning the Distaff on Forever Unbridled. (Id. at p. 112.)

24 Additionally, the Stewards’ decision to order the Double Jockey Fees resulted in
25 awarding whatever amount Rosario would have collected had he ridden Forever Unbridled in
26 the Distaff, which equals the amount of damages California courts order in similar situations.
27 (See e.g., *Brandon & Tibbs v. George Kevorkian Accountancy Corp.* (1990) 226 Cal. App. 3d
28 442, 455 [“The aim is to put the injured party in as good a position as he would have been had

1 performance been rendered as promised.”].) Thus, the Stewards’ Double Jockey Fees Decision
2 was equitable under the circumstances and followed applicable California law.

3 Accordingly, the Stewards correctly determined that Rosario had the “call” on Forever
4 Unbridled, and correctly ordered Appellant to pay to Double Jockey Fees. Thus, the Stewards
5 did not commit a mistake of law in issuing the Double Jockey Fees Decision.

6 **C. The Stewards Acted within their Authority in Ordering the Double Jockey Fees.**

7 Appellant further contends the Stewards acted outside their authority because no statute
8 or regulation allowed the Stewards to order Appellant to pay Double Jockey Fees before the
9 Distaff was drawn. Appellant’s argument is unpersuasive as the Stewards had authority to issue
10 the Double Jockey Fees Decision.

11 The Board is a constitutional agency possessing power to “regulate almost every aspect
12 of legalized horse racing and wagering.” (*Flores v. Los Angeles Turf Club* (1961) 55 Cal.2d
13 736, 745-746.) “In the absence of compelling circumstances, the Board should be permitted to
14 carry out its functions without undue judicial interference.” (*Sangster v. Cal. Horse Racing Bd.*,
15 (1988) 202 Cal. App. 3d 1033, 1039-1040, citations omitted.)

16 Specifically, Code Regs. Tit. 4 § 1791 (“Section 1791”), which applies to this Appeal,
17 states that “[c]onflicting claims for the services of a jockey shall be decided by the stewards.”

18 Here, Section 1791 explicitly gave the Stewards the authority to adjudicate conflicting
19 claims for the services of a jockey. (See, Code Regs. Tit. 4 § 1791.) The Stewards learned of
20 Anderson’s Complaint, investigated the Complaint, and, after completing said investigation,
21 they determined Rosario had the “call” on Forever Unbridled. (See, Ex. 1.)

22 Accordingly, the Stewards properly exercised the powers afforded them in Section 1791
23 by launching an inquiry into Anderson’s Complaint and subsequently issuing the Double Jockey
24 Fees Decision. (See e.g., *Youst v. Longo* (1987) 43 Cal. 3d 64, 80 [“[T]he Board has very broad
25 power to regulate and discipline wrongful conduct which involves horseracing in
26 California...”].)

27 And, this Officer’s conclusion is somewhat further strengthened and supported by Code
28 Regs. Tit. 4 § 1530 (“Section 1530”) and Code Regs. Tit. 4 § 1632(c) (“Section 1632”), which

1 provide the Stewards with broad powers to determine disputed "calls." Section 1530 allows the
2 Stewards to determine "any case occur which may not be covered by the Rules and Regulations
3 of the Board or by other accepted rules of racing, it shall be determined by the stewards in
4 conformity with justice and in the interest of racing." (Code Regs. Tit. 4 § 1530.) Section 1632
5 states that "if there is a substitution of jockeys, no additional jockey fee or double jockey fee
6 need be paid except when ordered by the stewards." (Code Regs. Tit. 4 § 1632(c).)

7 While Section 1632 appears to concern situations where a jockey is replaced after a race
8 is drawn, which somewhat different from the instant matter, it still provides the Stewards with
9 authority to order double jockey fees. Indeed, the fact that Appellant unilaterally replaced
10 Rosario mere hours before the Breeders' Cup draw essentially renders it a jockey substitution
11 situation because:

12 (1) Anderson did not have an opportunity to secure another mount for Rosario to
13 ride in the Distaff; (2) every other horse running in the Distaff had already
14 committed to the other jockeys; and (3) Rosario was precluded from the business
15 opportunity to earn any portion of the Distaff's \$2,000,000.00 purse. (H.T. at p.
16 98, 171.)

17 Accordingly, the Stewards correctly ordered Appellant to pay Double Jockey Fees
18 pursuant to Section 1632. (See e.g., *Sangster v. Cal. Horse Racing Bd.*, (1988) 202 Cal. App. 3d
19 1033, 1038 ["Additionally, a primary rule of statutory construction is to construe a statute to
20 promote its purpose, render it reasonable, and avoid absurd consequences."].)

21 Even if Section 1632 does not specifically cover the Complaint, Section 1530 provides
22 the Stewards broad authority and flexibility to determine issues of disputed jockey calls that are
23 not specifically covered by horse racing law. Indeed, the Stewards' Double Jockey Fees
24 Decision "conformed with justice and interests of racing" for the reasons set forth in above in
25 Section B while Section 1632 provides the Stewards with the authority to issue the remedy of
26 double jockey fees.

27 Indeed, the Stewards regularly order double jockey Fees in similar situations. (H.T. at p.
28 97 [It is the policy and practice of the Stewards to order a double jockey fee when the facts
require such an order.], H.T. at p. 108 [Stewards order double jockey fees about once every two
months over the previous three years.])

1 Taken together, Section 1530 and Section 1632 confer broad discretion and authority to
2 determine disputed jockey call situations such as Anderson's Complaint. Appellant has failed
3 to provide any compelling circumstances to disturb the Stewards in carrying out their functions.
4 (See e.g., *Sangster v. Cal. Horse Racing Bd.*, (1988) 202 Cal. App. 3d 1033, 1039-1040.)

5 Finally, Appellant's reliance upon the Association of Racing Commissioners
6 International Model Rules of Racing (the "Model Rules") does not change this Officer's
7 analysis. (See Ex. 21.) In fact, the Model Rules supports this Officer's determination that the
8 Stewards acted within their authority as ARCI-008-030(H) states in pertinent part that: "[a]ny
9 conditions or considerations not covered by the above rule shall be at the discretion of the
10 stewards." (See Ex. 21.) Thus, Appellant's reliance upon the Model Rules fails to advance his
11 position in this Appeal.

12 Accordingly, Section 1791, Section 1632, and Section 1530 provide the Stewards with
13 the power to determine disputed jockey calls and order double jockey fees, if necessary. Thus,
14 the Stewards did not commit a mistake of law in issuing the Double Jockey Fees Decision.

15 **D. Appellant's Equity Argument is Unpersuasive.**

16 Next, Appellant argues that the result of the Double Jockey Fees Decision requiring
17 Appellant to pay Rosario \$110,000.00 is unequitable and unconscionable. Appellant's
18 argument is unpersuasive.

19 Specifically, the Stewards issued the Double Jockey Fees Decision before the running of
20 the Distaff. The Stewards did not know how much money Rosario would receive. Indeed, it
21 could have been less than \$150.00 had Forever Unbridled finished worse than fifth place. The
22 evidence shows the size of the Distaff's purse was irrelevant as the Stewards would have
23 ordered Appellant pay Double Jockey Fees regardless of purse size. (H.T. at p. 100.) This is
24 why the Stewards issued their Double Jockey Fees Decision days before the running of the
25 Distaff. (Id. at p. 106-107.)

26 Simply put, the large amount the Stewards ordered Appellant to pay was due to
27 Appellant breaching the agreement with Rosario to ride Forever Unbridled in the \$2,000,000.00
28 Distaff, not any unconscionable penalty the Stewards imposed. (H.T. at p. 106-107.).

1 Appellant's argument fails for this reason alone.

2 And, the Stewards gave Appellant the option of not being penalized if he agreed to allow
3 Rosario to ride Forever Unbridled in the Distaff. However, Appellant refused to name Rosario
4 on Forever Unbridled despite being aware that he would be required to pay Double Jockey Fees.
5 (Id. at p. 30, 34, Ex. 2.) Appellant cannot complain of inequity and after unconscionableness of
6 the Double Jockey Fees award when he had the opportunity to avoid it all together, but chose
7 not to. Appellant's argument fails for this reason also.

8 Nor does Appellant's attempt to use fines the Stewards levied against jockey agents for
9 breaching jockey call agreements support his equity argument. Specifically, the jockey agent
10 analogy does not apply because when a jockey agent breaches a call agreement, the trainer or
11 owner will not be precluded from an opportunity to earn any money as they would have found
12 another jockey to ride the horse. However, when Appellant took Rosario off Forever Unbridled,
13 Rosario could not find another horse to ride in that short period of time because there were no
14 horses available to ride. Thus, Appellant forced Rosario to forgo a business opportunity.

15 The fact jockey agents are fined when they breach a "call" agreement cannot be
16 compared to when a jockey is forced to miss the opportunity to ride in a race worth millions of
17 dollars such as the Distaff.

18 Accordingly, Appellant's equity argument lacks merit.

19 **E. Appellant's Procedural Due Process Argument is Unpersuasive.**

20 Finally, Appellant argues that the Stewards violated his right to procedural due process
21 because the Stewards issued their Double Jockey Fees Decision without affording him a
22 hearing. (See Ex. 27.) However, Appellant fails to acknowledge, or even address, the fact this
23 Appeal in provides the requisite procedural due process required by law.

24 "Due process is the opportunity to be heard at a meaningful time and in a meaningful
25 manner." (*Southern California Underground Contractors, Inc. v. City of San Diego* (2003) 108
26 Cal.App.4th 533, 543.) It does not "require any particular form of notice or method of
27 procedure." (*Bockover v. Perko* (1994) 28 Cal.App.4th 479, 486.) "Somewhere along the line
28 appellant is entitled to meet its adversary on equal footing in a full and fair hearing, before an

1 impartial tribunal, with the full and complete right to present evidence and cross-examine
2 witnesses.” (*Alta-Dena Dairy v. County of San Diego* (1969) 271 Cal. App. 2d 66, 77, see also,
3 *Apte v. Regents of Univ. Cal.* (1988) 198 Cal. App. 3d 1084, 1098.)

4 Here, Appellant essentially argues that due process entitles him to at least two fair
5 hearings, one in front of the Stewards and another in front of this Officer. (See e.g., *Hohreiter*
6 *v. Garrison* (1947) 81 Cal. App. 2d 384, 402 [“Due process contemplates that somewhere along
7 the line a fair trial be had—not that there be two or three fair trials.”].) However, Appellant was
8 afforded procedural due process as he was given the right to appeal the Double Jockey Fees
9 Decision and request a hearing in front of this Officer, rights which Appellant exercised.

10 Before issuing the Double Jockey Fees Decision, the Stewards conducted a thorough
11 investigation where they permitted Anderson and Appellant the opportunity to be heard and
12 present their position concerning the Complaint. (H.T. at p. 16-17, 29-31, 59-60, 64, 66, 104,
13 129-130, 170-171.) After completing the investigation and giving all interested parties the
14 ability to present their respective positions, the Stewards issued their unanimous Double Jockey
15 Fees Decision. (Id. at 103-104, Ex. 1.)

16 Appellant timely appealed the Stewards’ Double Jockey Fees Decision pursuant to Code
17 Regs. Tit. 4 § 1761 which states that: “[f]rom every decision of the stewards, except a decision
18 concerning the disqualification of a horse due to a foul or a riding or driving infraction, an
19 appeal may be made to the Board.” (Code Regs. Tit. 4 § 1761(a).) Upon the CHRB receiving
20 Appellant’s Appeal, it stayed the Double Jockey Fees Decision during the pendency of this
21 Appeal was pending. (Ex. 1.)

22 The CHRB set this Appeal for hearing, gave notice of said hearing to all interested
23 parties, and advised the parties of the opportunity to be heard. Appellant was then afforded a
24 full and complete hearing in front of this impartial Officer where Appellant: (1) was represented
25 by counsel; (2) presented evidence in support of his position; (3) called witnesses to testify on
26 his behalf; (4) cross examined witnesses; and (5) confronted his adversary, the CHRB.
27 Moreover, a record of the Appeal hearing was maintained via court reporter who also
28

1 administered an oath to each witness providing oral testimony. Finally, Appellant will be
2 provided with a detailed finding of facts and legal basis, which is this Proposed Order.

3 Simply put, there is no legal basis supporting Appellant's assertion that the Stewards
4 violated Appellant's procedural due process rights by failing to provide a formal hearing before
5 issuing the Double Jockey Fees Decision. Rather, Appellant was afforded procedural due
6 process in the form of this Appeal and its formal evidentiary hearing, all of which occurred
7 prior to any deprivation of Appellant's property interests. (See e.g., *Hohreiter v. Garrison*
8 (1947) 81 Cal. App. 2d 384, 401 ["Appellant, in being given two complete trials, has been
9 afforded more protection of his rights than is normally afforded a person accused of crime, who
10 is legally entitled to but one trial."], see also, *Mohilef v. Janovici* (1996) 51 Cal. App. 4th 267,
11 286 ["Due process principles require reasonable notice and opportunity to be heard before
12 governmental deprivation of a significant property interest."].)

13 Accordingly, Appellant was afforded an "opportunity to be heard at a meaningful time
14 and in a meaningful manner," and thus Appellant received procedural due process, as required.
15 (See e.g., supra, *Southern California Underground Contractors, Inc.*, 108 Cal.App.4th at 543.)

16 VII. CONCLUSION

17 Because the Stewards correctly interpreted the law, Appellant failed to meet his burden
18 of proof necessary to grant his Appeal, and thus Appellant's Appeal should be denied.

19 WHEREFORE, it hereby recommended that Appellant's Appeal of SAC 17-0025 be
20 denied, and that the Double Jockey Fees amount be distributed to Joel Rosario in accordance
21 with this Proposed Decision.

22 Dated: June 8, 2018



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