

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:

Fitness for Licensure

BENITO PEREZ, JR.
CHRB License #291673
Applicant

Case No. SAC 10-0012

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 April 16, 2010.

IT IS SO ORDERED ON April 15, 2010.

CALIFORNIA HORSE RACING BOARD
Keith Brackpool, Chairman



Kirk E. Breed
Executive Director

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In the Matter of:

Fitness for Licensure

Case No. SAC 10-0012

BENITO PEREZ, JR.,
Applicant

PROPOSED DECISION

This matter came for hearing in the offices of the California Horse Racing Board (Board) at Santa Anita Race Track, Arcadia, California on March 18, 2010. Assistant Executive Director Richard Bon Smith acted as Referee for the Board pursuant to Section 1414, Title 4, California Code of Regulations.

Applicant Benito Perez, Jr. (Perez) appeared and was not otherwise represented by Counsel. Perez was accompanied by his mother, Maria C. Perez (CHRB License # 226510) and brought no other witnesses. He presented two letters of recommendation (see below). The proceedings were tape recorded; court reporter Barbara Weinstein transcribed.

Senior Special Investigator James Hamilton (Hamilton) appeared and presented evidence on behalf of the Board.

At the hearing the parties were afforded the opportunity to present evidence and respond to questions. Relevant documentation (Perez' application package) was introduced by Hamilton as an exhibit (Exhibit A) to the matter and subjected to discussion, along with testimony from the applicant and his mother. Hand-written letters from trainer Herbert Bacorn (Perez' former employer) and Assistant Trainer Chris Crowe were presented by Perez and entered into the record as Defendant's Exhibits 1 and 2. Upon receipt of the testimonial and documentary evidence, and concluding the discussion, the record was closed and the matter deemed submitted.

BACKGROUND

Benito Perez, Jr. applied for licensure as a groom on February 4, 2009, and was issued temporary occupational license # 291673. A background review of criminal files showed that Perez had misrepresented himself on the licensing application. Specifically, question

#1 on the application asks, "Have you ever been convicted of an offense by a court?" to which Perez checked "no". CHRБ investigations staff subsequently received a report from the California Department of Justice Bureau of Criminal Identification and Information that indicated Perez had separate 2008 convictions for misdemeanor vandalism and misdemeanor theft for which he was on probation through the end of 2011. Accordingly, on March 10, 2009, CHRБ Executive Director Kirk E. Breed issued Order # SAC 09-0027 to terminate Perez' temporary license for material misrepresentation. Further, on April 2, 2009, CHRБ issued to Perez a Notice of Refusal of License, citing the terms of Directive 01-09, and notifying him of his right to appeal the refusal and request a fitness hearing. The hearing held March 18, 2010 was for the purpose of that appeal and assessment of his fitness for licensure.

FINDINGS OF FACT

During a review of materials submitted and subsequent testimony of applicant Perez, his mother, and CHRБ Investigator Hamilton, and with no indication of evidence to the contrary, the following are taken as accepted findings of fact.

I.

California Department of Justice Criminal Identification and Information Bureau records show that Benito Perez, Jr., CHRБ Lic. #291673 was arrested separately for misdemeanor vandalism and misdemeanor theft in 2008, was convicted and served eight days jail time, and was placed on unsupervised probation for three years. Reports from the California Department of Justice show no further criminal activity since those convictions.

II.

CHRБ Senior Special Investigator Hamilton entered the entire package of documents relevant to Perez and his application as evidence. This included a completed application form and criminal history, the applicable CHRБ Investigative documents, Notice of Refusal of License, Notice of Hearing, and Perez' handwritten request for a hearing. Added to the Investigations file at the hearing was a copy of a letter from the Los Angeles County Superior Court showing fines due from Perez totaling \$807 as of December 29, 2009. Communication with that Court in March 2010 revealed that the amounts due had been paid in full.

III.

Perez' temporary license was terminated on March 10, 2009, for material misrepresentation on his application for license. In the subsequent Notice of Refusal of License, CHRБ Directive 1-09 was cited. In accordance with the terms and conditions of that directive, Perez would not be eligible to be licensed until January 2011, at the conclusion of his term of probation. He appealed the refusal and was granted a hearing.

IV.

Perez expressed his intent to assume responsibility for his behavior, and his desire to go to work at the track as a means to support his family. He asserted that he had separated himself from his criminal contacts, had paid his fines and debts, and understood the terms and conditions of his license refusal. When asked about the reason for his misrepresentation on the license application, Perez was initially evasive. Under questioning he admitted he had lied to cover his past, thinking no one would verify his record. His mother stated that she had worked at Santa Anita and other Southern California race tracks for some twenty-plus years and would assist her son's obtaining employment with Trainer Jerry Fanning in the backstretch. Letters from Trainer Herbert Bacorn and Assistant Trainer Chris Crowe spoke to Perez' work ethic and demeanor.

V.

In the time since Perez' last conviction, he has had no additional criminal record and has paid fines and penalties against him. His probation period runs through December 2011.

APPLICABLE RULES

California Horse Racing Board Rule #1489 (Grounds for Denial or Refusal of License) states in part:

The Board ... may refuse 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.

CHRB Directive 01-09 "License Refusals and Denials", effective January 6, 2009, adds the following:

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

c. Misdemeanors: A license applicant is not eligible for licensing until the term of probation has expired...

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.

DETERMINATION OF ISSUES

Perez was convicted of vandalism and theft, both misdemeanors, in 2008. In each case, he was placed on unsupervised probation for three years. In the period since his last conviction, he has had no additional criminal activity, and has paid off fines totaling \$807

outstanding citations. He accepted his sentence, has to date met the terms of his probation, and has expressed a willingness to comply with the terms of a restrictive permissive conclusion.

The primary issue is whether or not it would be appropriate to waive the terms of Directive 1-09 as regards licensure while on probation.

Maria Perez, who works for Trainer Jerry Fanning, has been a backstretch employee for over 20 years and has a spotless license record. She suggested that he could facilitate her son's hiring with Fanning or one or two others. Trainer Herbert Bacorn submitted a letter on his barn letterhead that indicated Perez had been dependable and did a good job for him. Assistant Trainer Chris Crowe, who works for Patrick Biancone, submitted a handwritten letter saying he would hire Perez given the opportunity to do so. Perez indicated he would accept any terms we placed on his license, including an automatic suspension if he were to breach the terms of his probation.

Directive 01-09 was written strongly to minimize the ability/authority of CHR B investigations staff from permissively approving licenses for recent criminals without a thorough vetting from executive management. Those terms seem a bit severe for a young man in Perez' situation. His crimes were of property, not violence (he did have an arrest for Assault while a minor, but was not convicted) and with the guidance of his mother; he seems less likely to return to those ways. Moreover, the question as to whether granting the appeal and allowing Perez' licensure would endanger the public or horse racing participants must be considered.

Perez was 18 years old at the time of his last arrest. He is now 20 and has expressed his acceptance of responsibility for his actions, and desire to provide for his children and family.

CONCLUSION/PROPOSED DECISION

It is recommended that Benito Perez, Jr. be allowed to apply to be licensed as a Groom in accordance with CHR B Rules # 1481 and 1485. (d), under the following condition:

- (a) Mr. Perez' licensure would be contingent on successful continuation and completion of the terms of his probation.

March 23, 2010
Sacramento, California



Richard Bon Smith, Hearing Officer