

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Appeal from the Board
of Stewards Official Ruling #169, Santa
Anita Spring Meet, dated June 9, 2016

Case No. SAC16-0025

**DISQUALIFICATION OF THE HORSE
"CHINA GIRL LOVER" FROM THE
FIFTH RACE AT SANTA ANITA RACE
TRACK ON FEBRUARY 7, 2016**

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 30, 2017.

IT IS SO ORDERED ON January 26, 2017.

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 16-0025

11 **Appeal of the Board of Stewards Official**
12 **Ruling No. 169, Santa Anita Spring Meet,**
13 **Dated June 9, 2016**

PROPOSED DECISION REGARDING
THE APPEAL OF THE BOARD OF
STEWARDS OFFICIAL RULING NO.
169, SANTA ANITA SPRING MEET,
DATED JUNE 9, 2016

14 **DISQUALIFICATION OF THE HORSE**
15 **"CHINA GIRL LOVER" FROM THE**
16 **FIFTH RACE AT SANTA ANITA RACE**
TRACK ON FEBRUARY 7, 2016

17 **I. INTRODUCTION**

18 This matter arises from an appeal of the Board of Stewards Official Ruling No. 169
19 disqualifying racehorse, China Girl Lover ("China Girl Lover" or the "Horse"), from the fifth
20 race run at Santa Anita Race Track on February 7, 2016 (the "Appeal").

21 Darrel Vienna, Esq. represented Appellant Patrick Sheehy ("Appellant") during the
22 Appeal. Deputy Attorney General Vanessa Martinez, Esq. represented Respondent the
23 California Horse Racing Board ("Respondent" or the "CHRB") during the Appeal

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

26 Having read and considered the papers presented by the parties, the Officer found this
27 Appeal appropriate for disposition without holding a hearing. Thus, the hearing set for
28 November 30, 2016 was vacated.

1 **II. EXHIBITS ADMITTED INTO EVIDENCE**

2 **A. Exhibits Entered into Evidence.**

3 The following exhibits were entered into evidence:

- 4 Exhibit "1" Order Granting Stay Issued by CHRB Executive Director Rick Baedeker
5 on June 14, 2016;
- 6 Exhibit "2" Letter from Darrel Vienna to CHRB Chairman, the Honorable
7 Charles Winner, Appealing Official Ruling No. 169 and Requesting a
8 Stay, Dated June 11, 2016;
- 9 Exhibit "3" The Board of Stewards' Statement of Decision and Official
10 Ruling No. 169, Santa Anita Race Track Spring Meet, Dated June 9,
11 2016;
- 12 Exhibit "4" Transcript of Proceedings, CHRB Case No. 16SA0042, Dated May 14,
13 2016;
- 14 Exhibit "5" CHRB Exhibits Admitted into Evidence During the May 14, 2016
15 Proceedings Concerning Case No. 16SA0042;
- 16 Exhibit "6" Appellant's Exhibits Admitted into Evidence During the May 14, 2016
17 Proceedings Concerning Case No. 16SA0042;
- 18 Exhibit "7" The October 4, 2016 Order Setting the Instant Appeal's Briefing
19 Schedule;
- 20 Exhibit "8" Appellant's Opening Brief Dated October 24, 2016;
- 21 Exhibit "9" Respondent's Brief Dated November 9, 2016; and
- 22 Exhibit "10" Appellant's Reply Brief Dated November 15, 2016.

23 **II. FACTUAL FINDINGS**

24 After analyzing the record below and the parties' briefs, this Officer hereby makes the
25 following findings of fact:

26 **A. Previous Races that China Girl Lover Entered and Ran in.**

27 **I.**

28 On August 1, 2015, China Girl Lover entered and ran in a \$16,000.00 claiming race at

1 Del Mar (the "August 2015 race"). (Ex. 3 at p. 2; Ex. 5, "Equibase Race Chart for the First
2 Race Run at Del Mar on August 1, 2015.") Because China Girl Lover had not run in the
3 previous 180 days, and because China Girl Lover was entered in a claiming race "equal to or
4 greater than the price it last started," Appellant declared China Girl Lover "ineligible to be
5 claimed" pursuant to Cal. Code Regs. Tit. 4 § 1634 ("Section 1634"). (Ex. 3 at p. 2; Ex. 5,
6 "Race Chart for the First Race at Del Mar on August 1, 2015.")

7 II.

8 On November 8, 2015, China Girl Lover entered and ran third in the first race at Del
9 Mar (the "November 8th race"). (Ex. 5, "Race Chart for the First Race at Del Mar on
10 November 8, 2015.") The November 8th race was a starter allowance restricted to three-year-
11 olds and upward that had started for a claiming price of \$20,000.00 or less in 2015. (Id.)

12 Although China Girl Lover was not eligible to run this race, the Stewards did not
13 disqualify the Horse. (Ex. 3 at p. 5.) China Girl Lover's trainer, Dan Hendricks ("Hendricks"),
14 believed the Horse was eligible to start in the November 8th race. (Ex. 4 at p. 21-22, Ins. 24-7.)

15 III.

16 On November 29, 2015, China Girl Lover entered and ran second in the fifth race at Del
17 Mar (the "November 29th race"). (Ex. 5, "Race Chart for the Fifth Race at Del Mar on
18 November 29, 2015.") The November 29th race was also a starter allowance restricted to three-
19 year-olds and upward that previously started for a claiming price of \$20,000.00 or less in 2015.
20 (Id.)

21 Although China Girl Lover was not eligible to run this race, the Stewards did not
22 disqualify the Horse. (Ex. 3 at p. 5.) Hendricks believed China Girl Lover was eligible to start
23 in the November 29th race. (Ex. 4 at p. 21-22, Ins. 24-7.)

24 B. The Super Bowl Party Starter Handicap.

25 IV.

26 The Super Bowl Party Starter Handicap (the "Handicap") is a starter handicap race
27 restricted to "four-years-old and older which have *started* for a claiming price of \$25,000.00 or
28 less in 2015-2016." (Ex. 5, "Super Bowl Starter Handicap Conditions Found in the Santa Anita

1 Condition Book” [emphasis added].) The Handicap carried a \$40,000.00 purse and was
2 scheduled to run on February 7, 2016 at a distance of one mile and one eighth over the Santa
3 Anita turf course. (Id.)

4 V.

5 China Girl Lover’s trainer, Hendricks, entered the Horse in the Handicap believing that
6 China Girl Lover’s start in the August 2015 race made the Horse eligible to start in the
7 Handicap. (Ex. 3 at p. 2.)

8 VI.

9 On February 7, 2016, China Girl Lover ran in, and won, the Handicap earning
10 \$16,200.00 in purse money. (Ex. 3 at p. 2.)

11 VII.

12 Subsequent to Horse’s victory in the Handicap, the Santa Anita Racing Office (“racing
13 office”) contacted the Board of Stewards (“Stewards”) and informed them that China Girl Lover
14 may have been ineligible to start in the Handicap. (Ex. 3 at p. 3.)

15 VIII.

16 On February 13, 2016, based upon the information the racing office provided, the
17 Stewards issued LATS Ruling No. 49. (Ex. 3 at p. 3.) Specifically, Ruling No. 49 gave notice
18 to all interested parties that the Stewards were investigating whether China Girl Lover was
19 eligible for the Handicap. (Ex. 5, “Board of Stewards Official Ruling, LATS Ruling No. 49.)

20 **C. The CHR B Complaint and Subsequent Hearing Concerning China Girl Lover’s**
21 **Eligibility to Run in the Handicap.**

22 IX.

23 On April 1, 2016, the CHR B filed a formal complaint alleging that:

24 On February 7, 2016, the Horse China Girl Lover trained by Dan Hendricks,
25 finished first in the fifth race at Santa Anita. The Horse was ineligible to race that
26 day because on August 1, 2015, China Girl Lover was not entered for the
27 claiming price in the first race at Del Mar. The race, won by China Girl Lover,
28 was a \$16,000.00 claiming race. (Ex. 5, the April 1, 2016 CHR B Complaint
Issued in Case No. 16SA0042.)

1 The CHRB set a May 14, 2016 hearing date to determine whether China Girl Lover was
2 ineligible for the Handicap (the "Eligibility Hearing"). (Ex. 3 at p. 1.) The Stewards gave all
3 owners and trainers of horses that participated in the Handicap (the "interested participants")
4 formal notice of the Eligibility Hearing. (Id. at p. 5.)

5 **X.**

6 On May 14, 2016, the Eligibility Hearing was held at Santa Anita Race Track. (Ex. 4 at
7 p. 5.) The following individuals were present: (1) Hendricks; (2) Hendricks' counsel of record,
8 Darrell Vienna; (3) Stewards, Scott Chaney, Kim Sawyer, and Grant Baker; and (4) CHRB
9 investigator Phil Miyazaki. (Id.) Notably, none of the Handicap's interested participants,
10 including Appellant, appeared the Eligibility Hearing, despite the Stewards giving them formal
11 notice. (Id.; Ex. 3 at p. 5.)

12 After all presented exhibits and testimony were entered into evidence, the Eligibility
13 Hearing concluded on May 14, 2016 at 11:37 a.m. (Ex. 4 at p. 25.)

14 **XI.**

15 On June 9, 2016, the Stewards issued Official Ruling LATS No. 169 (the "Ruling").
16 The Ruling determined was China Girl Lover ineligible for in the Handicap and disqualified the
17 Horse. (Ex. 3 at p. 6.) The Ruling further ordered China Girl Lover forfeit the purse money
18 earned by winning the Handicap and redistributed the money to the Handicap's eligible runners.
19 (Id.) The Ruling was a two to one majority decision, with one steward dissenting. (Id. at p. 5.)

20 In support of the Ruling, the Stewards issued a Statement of Decision determining the
21 following three issues:

22 (1) [W]hether China Girl Lover was eligible for the starter handicap based on his
23 race for which he employed the claiming option when he entered, if not; (2)
24 should trainer Dan Hendricks be penalized for the error; and (3) should the horse
be disqualified from the starter race and the purse redistributed? (Ex. 3 at p. 4.)

25 Only issues one and three are relevant to this Proposed Order and Appeal.

26 The Stewards unanimously found China Girl Lover was ineligible for the Handicap.
27 (Ex. 3 at p. 4-5.) Specifically, the Stewards determined China Girl Lover did not start for a
28 \$16,000.00 claiming price when he ran in the August 2015 race because Appellant exercised his

1 Section 1634 right and declared the Horse ineligible to be claimed. (Id. at p. 3.) Thus, the
2 Stewards unanimously concluded that China Girl Lover did not start for a claiming price of
3 \$25,000.00 or less during 2015-2016 as the Handicap's race conditions required. (Id.)

4 In regards to whether China Girl Lover should be disqualified requiring a redistribution
5 of the Handicap's purse, in a majority decision, the Stewards disqualified China Girl Lover and
6 redistributed the purse pursuant to Cal. Code Regs. Tit. 4 §§ 1592 and 1759. (Ex. 3 at p. 5.)

7 Steward Chaney dissented arguing that the Handicap's original results should stand
8 because the Handicap was run several months before the Ruling, the original results did not
9 harm the wagering public, the interested participants did not object before the Handicap, the
10 interested participants did not protest after running the Handicap, and even after the Stewards
11 gave them notice of the Eligibility Hearing those same participants failed to appear at the
12 Eligibility Hearing. (Id. at p. 5.)

13 **D. The Appeal's Procedural Background.**

14 **XII.**

15 On June 11, 2016, Appellant timely filed a "Notice of Appeal" with the CHRB and
16 simultaneously sought a stay of the Ruling (the "Hearing Notice"). (Ex. 8.) Appellant
17 identified the following issues as to why the CHRB should grant both the Appeal and request
18 for a stay:

19 (1) [T]he Purse Redistribution was an arbitrary interpretation of the language of
20 the conditions of the February 7, 2016 race, an interpretation that is neither based
21 on CHRB rules nor agency precedent; and (2) the stewards failed to exercise their
discretion to uphold the original purse distribution. (Ex. 2.)

22 On June 14, 2016, the CHRB granted Appellant's request for a stay. (Ex. 1.)

23 **XIII.**

24 On October 3, 2016, this Officer held a telephonic scheduling conference with counsel
25 for Appellant and counsel for the CHRB. Pursuant to the parties' agreement, the following
26 scheduling order was entered:

- 27 • Appellant's Opening Brief was to be filed no later than October 24, 2016;
- 28 • Respondent's Opening Brief was to be filed no later than November 9, 2016;

- Appellant's Reply Brief was to be filed no later than November 16, 2016; and
- A hearing was set for November 30, 2016, if a hearing was necessary. (Ex. 7.)

XIV.

Because the facts of the Appeal are undisputed and because the parties' adequately briefed the Appeal's major issues of law, a hearing was not necessary. Thus, the tentative November 30, 2016 hearing date was vacated.

III. STANDARD OF REVIEW AND CONTROLLING LAW

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

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

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

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

The parties agree that the Appeal's underlying facts are not in dispute and the major issue is whether the Stewards correctly applied horseracing law.

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

VI. ANALYSIS

A. China Girl Lover did not Start for a Claiming Price.

1 This Appeal's threshold issue is whether the August 2015 race made China Girl Lover
2 eligible to run in the Handicap. As explained below, China Girl Lover was ineligible for the
3 Handicap because the Horse did not *start* for a claiming price of \$25,000.00 or less in 2015 or
4 2016. (*Emphasis added.*)

5 Cal. Code Regs. Tit. 4 § 1420(x) defines "starter" as a horse "when it is in the starting
6 gate stall, and, when the starter dispatches the field, the stall gate in front of the horse is
7 opened."

8 Here, a horse was eligible to start in the Handicap if the horse: (1) was at least four-
9 years-old; and (2) had previously started for a claiming price of \$25,000.00 or less in 2015 or
10 2016. (Ex. 5.)

11 However, China Girl Lover did not start for a \$16,000.00 claiming price when the Horse
12 ran in the August 2015 race. Specifically, when China Girl Lover was entered in the August
13 2015 race, Appellant exercised his Section 1634 right to run the Horse without "risking it for a
14 claiming price." (Ex. 3 at p. 2; Ex. 5, "Race Chart for the First Race at Del Mar on August 1,
15 2015.") Because China Girl Lover could not be claimed out of the August 2015 race, the Horse
16 did not *start* for a claiming price despite the fact the Horse ran in a \$16,000.00 claiming race.
17 (See Cal. Code Regs. Tit. 4 § 1420(x).

18 While Appellant correctly states that China Girl Lover entered and ran in the August
19 2015 race, he ignores the plain language of the Handicap's conditions. Specifically, a horse did
20 not become eligible for the Handicap by entering in and/or running in a claiming race. Rather,
21 only a horse that previously *started* for a claiming price of \$25,000.00 or less was eligible to run
22 in the Handicap. Because it was not possible to claim China Girl Lover from the August 2015
23 race, the Horse failed to meet the Handicap's eligibility requirements meaning China Girl Lover
24 was ineligible for the Handicap.

25 Appellant's argument that the racing secretary may establish race conditions is irrelevant
26 as the Handicap's conditions required China Girl Lover to previously have *started* for a
27 claiming price of no more than \$25,000.00, which the Horse did not do. Appellant's argument
28 is unpersuasive for this reason alone.

1 Finally, Appellant's claim that the racing secretary believed China Girl Lover was
2 eligible for the Handicap is unsupported by the record. In fact, the following testimony as to
3 whether the racing secretary believed China Girl Lover was eligible for the Handicap at the time
4 of the Horse's entry was admitted into evidence:

5 Mr. Vienna: I spoke with Rick [Santa Anita's racing secretary] and he said when
6 the horse was entered, that the entry blank—excuse me. The papers which showed
7 the prior races of the horse showed a win in the claiming \$16,000.00 race. So
8 when he [the racing secretary] looked for eligibility on the papers he saw one
9 claiming \$16,000.00

8 Steward Sawyer: I just think it's fair to say that he probably at the time wasn't
9 aware that the horse didn't actually run for a claiming price. But when you look
10 at the back of the full papers—

10 Mr. Vienna: I think that is fair to say.
11 (Ex. 4 at p. 22, lns. 9-20.)

12 Because there is no evidence that the racing secretary knew that China Girl Lover had
13 not run for a \$16,000.00 claiming price when the Horse was entered in the Handicap,
14 Appellant's argument lacks factual merit.

15 Accordingly, China Girl Lover was ineligible to start in the Handicap.

16 **B. Section 1759 Permitted the Stewards to Disqualify China Girl Lover.**

17 Next, Appellant contends the Stewards committed a mistake of law by finding that Cal.
18 Code Regs. Tit. 4 § 1759 ("Section 1759") permitted China Girl Lover's disqualification. Code
19 Regs. Tit. 4 § 1750 ("Section 1750") empowers the Stewards to file their own protest.
20 Specifically, Section 1750 states that:

21 The stewards shall make diligent inquiry into any objection or protest made either
22 upon their own motion, by any racing official, or by any other person empowered
23 by this division to make such protest or objection.

23 In addition, Section 1759 allows the Stewards to disqualify a horse if protest is found to
24 be valid. Section 1759 states:

25 If a protest against a horse which has won or which has placed in any race is
26 declared valid, that horse may be disqualified and the other horses in the race are
27 entitled to places in the order in which they finished. A horse so disqualified is a
28 starter in the said race and may be placed last in the order of finish, or behind a
horse interfered with.

28 Here, Section 1750 explicitly gives the Stewards an unconditional right to file a protest

1 upon their own motion, as the Stewards did in this case. Specifically, the Stewards learned that
2 China Girl Lover may not have been eligible to start in the Handicap and, upon their own
3 motion, proceeded to launch an inquiry into China Girl Lover's eligibility for the Handicap.
4 (Ex. 3 at p. 3; Ex. 5, "Board of Stewards Official Ruling, LATS Ruling No. 49.) Accordingly,
5 the Stewards properly exercised the powers afforded them in Section 1750 and Section 1759
6 when they investigated the China Girl Lover's eligibility and subsequently disqualified China
7 Girl Lover from the Handicap.

8 Appellant further ignores the fact that the Stewards also based their decision to
9 disqualify China Girl Lover on Cal. Code Regs. Tit. 4 § 1592 ("Section 1592"). (Ex. 3 at p. 5.)
10 Section 1592 states that "any horse ineligible to be entered for a race, or ineligible to start in any
11 race, who competes in such race may be disqualified and the stewards may discipline anyone
12 responsible therefor."

13 Section 1592 provides the Stewards with the right to disqualify an ineligible horse,
14 revise the order of finish, and redistribute the purse as they see fit. (See e.g., *Sangster v. Cal.*
15 *Horse Racing Bd.*, (1988) 202 Cal. App. 3d 1033, 1042 [Upholding the stewards' ruling
16 disqualifying an ineligible starter and redistributing the purse money pursuant to Cal. Code
17 Regs. Tit. 4 § 1592].)

18 Accordingly, Section 1592 and Section 1759 provides the Stewards with the power to
19 disqualify an ineligible horse. Thus, the Stewards did not commit a mistake of law by invoking
20 Section 1592 and Section 1759 to disqualify China Girl Lover.

21 **C. Appellant Received Procedural Due Process.**

22 Appellant further argues that he did not receive meaningful and adequate notice of the
23 Eligibility Hearing in violation of his right to procedural due process. Appellant specifically
24 argues he did not receive due process because the Hearing Notice failed to name Appellant as a
25 party and further failed to give notice that the Handicap's purse could be redistributed.

26 "Due process is the opportunity to be heard at a meaningful time and in a meaningful
27 manner." (*Southern California Underground Contractors, Inc. v. City of San Diego* (2003) 108
28 Cal.App.4th 533, 543.) It does not "require any particular form of notice or method of

1 procedure.” (*Bockover v. Perko* (1994) 28 Cal.App.4th 479, 486.) “A challenge to the
2 procedural fairness of the administrative hearing is reviewed de novo on appeal because the
3 ultimate determination of procedural fairness amounts to a question of law.” (*Nasha v. City of*
4 *Los Angeles* (2004) 125 Cal.App.4th 470, 482.)

5 Appellant due process argument is unpersuasive for several reasons. First, Appellant
6 had an opportunity to be heard as the CHRB gave Appellant notice of its investigation into
7 China Girl Lover’s eligibility and separately provided Appellant with notice of the Eligibility
8 Hearing. (Ex. 3 at p. 3, 5.) In fact, Appellant’s counsel appeared at the Eligibility Hearing.
9 (Ex. 6 at p. 9.) Further, undisputed evidence shows the CHRB gave Appellant notice of his
10 right to personally appear at the Eligibility Hearing. (Ex. 3 at p. 5.)

11 Second, Appellant waived the right to dispute the issue of adequate notice. “It is well
12 settled that the appearance of a party at the hearing . . . is a waiver of any defects or
13 irregularities in the notice of the motion. This rule applies even when no notice was given at
14 all.” (*Eliceche v. Federal Land Bank Assn.* (2002) 103 Cal.App.4th 1349, 1375 [citations
15 omitted].)

16 Here, Appellant’s undersigned counsel: (1) appeared at the Eligibility Hearing; (2)
17 submitted a brief supporting Appellant’s position; (3) was advised during the hearing that the
18 Handicap’s purse may be redistributed and failed to object; and (4) argued and submitted
19 evidence on Appellant’s behalf, including on whether the Handicap’s purse should be
20 redistributed. (Ex. 4 at p. 12-13, lns. 23-10; p. 19, lns. 9-12; p. 24-25, lns. 23-9; Ex. 6 at p. 9.)
21 For these reasons, Appellant waived the right to dispute any defects relating to notice of the
22 Eligibility Hearing.

23 Third, Appellant does not—and cannot—show the allegedly defective notice caused him
24 to suffer any prejudice. “In order to obtain a reversal based upon such a procedural flaw, the
25 appellant must demonstrate not only that the notice was defective, but that he or she was
26 *prejudiced.*” (*Reedy v. Bussell*, (2007) 148 Cal. App. 4th 1272, 1289.)

27 Here, the record before this Officer shows Appellant’s counsel appeared at the hearing
28 on Appellant’s behalf, filed a brief supporting Appellant’s position, and thoroughly argued the

1 merits of Appellant's position during the hearing. (Ex. 4 at p. 12-13, lns. 23-10; p. 19, lns. 9-12;
2 p. 24-25, lns. 23-9; Ex. 6 at p. 9.) More importantly, Appellant was afforded the opportunity to
3 fully brief his position on appeal.

4 Accordingly, Appellant fails to demonstrate he suffered any prejudice caused by the
5 allegedly defective Hearing Notice. (See e.g., *Israni v. Superior Court* (2001) 88 Cal.App.4th
6 621; *Cordova v. Vons Grocery Co.* (1987) 196 Cal. App. 3d 1526.))

7 Fourth, Appellant failed to raise the due process argument as a reason to grant this
8 Appeal, as required by Cal. Code Regs. Tit. 4 § 1761(b). (Ex. 2.; see also, Cal. Code Regs. Tit.
9 4 § 1761(b) ["Appeals shall be made in writing, stating the reason or reasons for the appeal, and
10 shall be signed by the appellant, appellant's attorney, or appellant's representative."].)
11 Appellant's procedural due process claim is unpersuasive for this reason also.

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

15 **D. The Stewards are Estopped from Redistributing the Handicap's Purse.**

16 Appellant next argues that the Stewards are estopped from redistributing the Handicap's
17 purse because China Girl Lover ran in two races that the Horse was ineligible to run in before
18 starting in the Handicap. In response, Respondent seems to contend the estoppel argument was
19 not raised during the Eligibility Hearing, and thus cannot be raised during this Appeal.

20 As an initial matter, Appellant's undersigned counsel is reminded of the legal principal
21 of *stare decisis* as Appellant's counsel fails to cite a single authority supporting his claim that
22 estoppel applies here.

23 Four elements must be present in order to apply the doctrine of equitable estoppel:

24 (1) [T]he party to be estopped must be apprised of the facts; (2) he must intend
25 that his conduct shall be acted upon, or must so act that the party asserting the
26 estoppel had a right to believe it was so intended; (3) the other party must be
27 ignorant of the true state of facts; and (4) he must rely upon the conduct to his
injury. (*Feduniak v. California Coastal Com.*, (2007) 148 Cal. App. 4th 1346,
1359, [citations omitted].)

28 "The government is not immune from the doctrine, and it may be applied where justice

1 and right require it.” (*Feduniak*, supra, 148 Cal. App. 4th at 1359 [citations omitted].)
2 “However, it must not be applied if doing so “would effectively nullify a strong rule of policy,
3 adopted for the benefit of the public...” (Id.)

4 In regards to the actual knowledge requirement, “knowledge of the pertinent facts may
5 be imputed where the circumstances show that one ought to have known them, and this is
6 especially so when the party to be estopped was negligent or made affirmative representations
7 related to those facts.” (*Feduniak*, supra, 148 Cal. App. 4th at 1361.)

8 California law is clear that the Stewards have a statutory duty to oversee the race entry
9 and declaration process. (See Cal. Code Regs. Tit. 4 § 1580 [“All entries and declarations are
10 under the supervision of the stewards, and they may, without notice, refuse the entries of any
11 person or the transfer of any entries, and they may also, in their discretion, limit entries by
12 providing that no horse shall be listed for more than one race in any one day.”].)

13 Here, the Stewards should have known that China Girl Lover was ineligible, and despite
14 that they should have known, the Stewards permitted China Girl Lover to enter and run in the
15 November 8th and November 29th races despite the Horse’s ineligibility. (Ex. 3 at p. 5.) At no
16 point, did the Stewards question whether China Girl Lover was eligible to run in the November
17 8th and November 29th races, and rather, allowed China Girl Lover to compete in those races.
18 Indeed, the Stewards never questioned China Girl Lover’s eligibility after the running of those
19 races. (Id.)

20 Because the Stewards should have known that China Girl Lover was ineligible to run in
21 the November 8th and November 29th races, and because the Stewards had a duty to supervise
22 the race entry process, and because the Stewards permitted China Girl Lover to compete in the
23 November 8th and November 29th races, equitable estoppel’s first requirement is met.

24 In regards to estoppel’s second element, the Stewards’ actions reasonably led Appellant
25 to believe the Horse to be eligible to start in the Handicap. Specifically, by permitting China
26 Girl Lover to enter and run in the November 8th and November 29th races, Appellant had the
27 right to reasonably believe China Girl Lover previously started for a \$16,000.00 claiming price
28 by running in the August 2015 race. Thus, Appellant correctly believed China Girl Lover was

1 eligible for the Handicap based on the Stewards' actions. Accordingly, the second element of
2 estoppel is met.

3 In regards to the third element, undisputed evidence shows Appellant was not aware that
4 China Girl Lover had not previously started for a \$16,000.00 claiming price, and that the Horse
5 was ineligible for the Handicap. In fact, Appellant, Hendricks, and the racing secretary were
6 unaware that China Girl did not previously run for a \$16,000.00 claiming price when the Horse
7 was entered in the Handicap. (Ex. 4 at p. 21-22, lns. 24-8.) Accordingly, this Officer finds
8 estoppel's third element is met.

9 Estoppel's element requiring Appellant to detrimentally rely upon the Stewards' conduct
10 is easily satisfied. Indeed, Appellant was injured when he was ordered to forfeit \$16,200.00 in
11 prize money China Girl Lover earned by winning the Handicap despite the fact Horse's
12 eligibility was never questioned on several previous occasions. Thus, estoppel's fourth element
13 is met.

14 Lastly, the equitable estoppel doctrine against a government agency if doing so nullifies
15 a strong public policy. (See e.g., *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496-97.)
16 This Officer finds that no public policy would be nullified or detrimentally affected if the
17 doctrine of equitable estoppel is applied.

18 Specifically, China Girl Lover's participation in the Handicap did not impact the
19 wagering public nor was the Horse's participation inimical to legitimate horse racing. Most
20 importantly, the individuals most strongly impacted by China Girl Lover's participation in the
21 Handicap failed to protest the results, or even appear at the Eligibility Hearing to contest the
22 Handicap's results. (Ex. 3 at p. 5; Ex. 4 at p. 5.)

23 In fact, the only issue informally raised by the interested participants was whether the
24 interested participant would get the NFL football given to the winner as a trophy symbolizing
25 the fact the race took place on Super Bowl Sunday. (Ex. 4 at p. 12, lns. 18-22.)

26 For these reasons, applying estoppel in this case does not: (1) nullify any public policy;
27 (2) interfere with public policy; (3) implicate public policy; and (4) detrimentally affect any
28 public policy.

1 Finally, in regards whether estoppel was raised during the Eligibility Hearing, this
2 Officer finds that it was adequately raised. (Ex. 3 at p. 5; Ex. 4 at p. 17, lns. 1-16; p. 19, lns. 13-
3 19.) “An appellate court may allow an appellant to assert a new theory of the case on appeal
4 where the facts were clearly put at issue at trial and are undisputed on appeal.” (*Richmond v.*
5 *Dart Industries, Inc.* (1987) 196 Cal. App. 3d 869, 879; *Panopulos v. Maderis* (1956) 47 Cal.2d
6 337, 341.)

7 A party is permitted to present a new legal theory on appeal “where a question of law
8 only is presented on the facts appearing in the record.” (*Adelson v. Hertz Rent-A-Car* (1982)
9 133 Cal. App. 3d 221, 225.) This Officer has the discretion to consider a new theory raised on
10 appeal based upon findings of fact made below. (See e.g., *Greenwich S.F., LLC v. Wong*
11 (2010) 190 Cal.App.4th 739, 767.)

12 Because whether estoppel applies to this Appeal is question of law based upon
13 undisputed facts presented at the Eligibility Hearing, and because estoppel was implicitly raised
14 below, it can be presented here. (Ex. 3 at p. 5; Ex. 4 at p. 17, lns. 1-16; p. 19, lns. 13-19; Ex. 8
15 at p. 11-12, lns. 11-3; Ex. 10 at p. 9, lns. 1-18.)

16 Having found the Stewards are estopped from redistributing the Handicap’s purse, this
17 Officer makes clear that the holding only applies to the facts and issues of this Appeal. In no
18 way shall this Proposed Decision be used as precedent in regularly applying estoppel to agency
19 actions.

20 Consequently, by affirmatively allowing China Girl to run in races the Horse was
21 ineligible for on several previous occasions, the Stewards are estopped from redistributing the
22 Handicap’s purse.

23 VIII. CONCLUSION

24 Because the majority of the Stewards mistakenly failed to apply the equitable doctrine of
25 estoppel, Appellant adequately met the burden of proof necessary to sustain Appellant’s Appeal.

26 This Officer further recognizes that there is some merit in the argument raised by
27 Appellant that it is unclear whether a horse starts for a claiming price if the trainer and/or
28 exercises his right to declare a horse ineligible to be claimed pursuant to Cal. Code Regs. Tit. 4

1 § 1634. Now that this matter has been called to the attention of the Board, it may wish to adopt
2 rule stating whether a horse starts for a claiming price if it does not run for a claiming price
3 pursuant to Cal. Code Regs. Tit. 4 § 1634.

4 WHEREFORE, it hereby recommended that Appellant's Appeal of SAC 16-0042 be
5 sustained, and that the Handicap's purse prize money be distributed to Appellant in accordance
6 with this Proposed Decision.

7 Dated: December 19, 2016



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