

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:

FITNESS FOR LICENSURE

JULIO CANANI

Appellant

Case No. SAC 17-0010

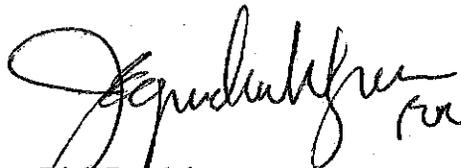
DECISION

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 26, 2017.

IT IS SO ORDERED ON June 22, 2017.

CALIFORNIA HORSE RACING BOARD
George Krikorian, 1st Vice-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 17-0010
11 FITNESS FOR LICENSURE)	PROPOSED DECISION RE: JULIO
12 JULIO CANANI)	CANANI'S FITNESS FOR LICENSURE
13 Previous CHRB License Nos. 084983,)	
14 101896, and 260180)	Hearing Date: April 21, 2017
15 Appellant.)	Time: 1:00 p.m.

16 **I. INTRODUCTION**

17 This matter came for hearing on April 21, 2017 at 12:27 p.m. at Los Alamitos Race
18 Course located in Los Alamitos, California 90720. Appellant Julio Canani ("Appellant") was
19 present and represented himself. The California Horse Racing Board ("CHRB") was present
20 and represented by Phillip J. Laird, Esquire.

21 Pursuant to California Horse Racing Board Rule 1414, Hearing Officer Patrick J. Kane
22 ("Officer") presided over this matter. Jacqueline Denlinger recorded all testimony presented
23 during the instant proceeding.

24 The instant matter's record closed at the conclusion of the proceedings on April 21, 2017
25 at approximately 1:10 p.m.

26 **II. EXHIBITS ADMITTED INTO EVIDENCE**

27 **A. Exhibits Appellant Entered into Evidence.**

28 Appellant entered the following exhibits into evidence:

- 1 Exhibit "1" Letter from Julio Canani to the CHRB Dated April 21, 2017;
2 Exhibit "2" Letter from Ronald McAnally to the CHRB Dated April 21, 2017;
3 Exhibit "3" Letter from Miguel Delgado to the CHRB Dated April 20, 2017;
4 Exhibit "4" Letter from Lisa Kaye Mundy to the CHRB Dated April 21, 2017;

5 **B. Exhibits the CHRB Entered into Evidence.**

6 The CHRB entered the following exhibits into evidence:

- 7 Exhibit "5" The March 28, 2017 Notice of Hearing Re: Fitness for Licensure,
8 Julio Canani, Appellant;
9 Exhibit "6" The Request for Hearing Dated January 4, 2016;
10 Exhibit "7" The Notice of Refusal of License Dated December 15, 2016;
11 Exhibit "8" The October 4, 2015 Board of Stewards' Ruling Case No. 12, and
12 the Accompanying Statement of Decision, Case No. 12HP0074;
13 Exhibit "9" The July 14, 2016 California Horse Racing Board's Decision
14 Adopting the Proposed Decision in Case No. SAC 15-0049;
15 Exhibit "10" The August 18, 2016 Notice of Ruling Denying Appellant's
16 Petition for Writ of Mandate filed in the Superior Court of
17 California, Case No. BS158592; and
18 Exhibit "11" The June 28, 2012 Jury Verdict and Findings in Case No. 09-cv-
19 09446-DSF-VBK, United States District Court for the Central
20 District of California.

21 **III. LIST OF TESTIFYING WITNESSES**

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

23 Appellant called the following the witnesses:

- 24 • Lisa Mundy;
25 • Lydia M. Rivas; and
26 • Julio Canani.

27 **B. Witnesses Testifying on Behalf of the CHRB.**

28 The CHRB did not call any witnesses during the instant proceeding.

1 **IV. FACTUAL FINDINGS**

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

4 **A. The Previous Litigation Captioned *Everest Stables, Inc. v. Julio Canani, et. al.***

5 **I.**

6 On or about December 23, 2009, Everest Stables, Inc. (“Everest”) filed an action in the
7 U.S. District Court for the Central District of California, Case No. 09-cv-09446-DSF-VBK (the
8 “Litigation”) against Appellant. (Ex. 3; Ex. 9 at p. 3.)

9 **II.**

10 The Litigation proceeded to trial. On June 28, 2012, a jury rendered a verdict in favor of
11 Everest and against Appellant on the following claims: (1) breach of fiduciary and agency
12 duties to Everest; (2) fraud; (3) civil conspiracy; and (4) unjust enrichment. (Ex. 11.)

13 **III.**

14 Specifically, the jury made the following factual findings:

15 Appellant, while acting as Everest’s agent regarding several horses Everest owned,
16 breached his fiduciary duties to Everest by “misrepresenting the horses’ physical condition or
17 misrepresenting and concealing his role and involvement in order to convince Everest to sell”
18 Everest’s horses at lower prices. (Ex. 11 at p. 2.) Appellant’s breach of the fiduciary duty
19 caused Everest to suffer damages. (Id. at p. 3.)

20 As to the fraud claim, Appellant unlawfully concealed and misrepresented his
21 involvement regarding the purchase of several Everest owned horses and intentionally
22 misrepresented the physical condition of the Everest owned horses. (Ex. 11 at p. 3.)
23 Appellant’s fraudulent conduct caused Everest to suffer damages. (Id. at p. 4.)

24 Concerning the conspiracy claim, Appellant conspired with Co-Defendant, Roger Licht
25 (“Licht”), to fraudulently induce Everest to sell its horses below their fair market value, which
26 caused Everest to suffer damages. (Ex. 11 at p. 4.) Finally, as to Everest’s cause of action for
27 unjust enrichment, Appellant unjustly obtained financial benefits from the sale of the Everest
28 horses while depriving Everest of the true value of its horses. (Ex. 11 at p. 5.)

1 **C. Appellant Appeals the Ruling.**

2 **VIII.**

3 Appellant timely appealed the Ruling and the accompanying suspension and
4 simultaneously sought a stay of the Ruling, which the CHRB denied. (Ex. 9 at p. 2.) On May
5 10, 2016, Hearing Officer Daniel Q. Schiffer heard Appellant's appeal, Case No. SAC 15-0049.
6 (Ex. 9 at p. 2.) On June 27, 2016, Officer Schiffer issued a proposed decision denying
7 Appellant's appeal and upholding the Ruling. (Ex. 9 at p. 13.)

8 **IX.**

9 On July 14, 2016, the CHRB issued a "Notice of Decision" adopting Officer Schiffer's
10 proposed decision. (Ex. 9.)

11 **X.**

12 On October 21, 2015, Appellant filed a verified petition seeking a writ of administrative
13 mandate seeking a stay of the Ruling (the "Petition") in the Superior Court for the State of
14 California, County of Los Angeles, Case No. BS158592. (Ex. 10 at p. 2.) The Court set
15 Appellant's Petition for hearing on August 16, 2016. (Id.) On August 16, 2016, after
16 considering the Petition and any opposition thereto, the Court denied Appellant's Petition. (Id.
17 at p. 1, 4.)

18 **D. The CHRB Denies Appellant's Application for Licensure.**

19 **XI.**

20 On December 15, 2016, Appellant presented an Application for License ("Application")
21 to the CHRB. Appellant's Application included a criminal history information sheet that listed
22 the Litigation and its "judgment for fraud." (Ex. 7.)

23 **XII.**

24 On December 15, 2016, CHRB investigator J. Hamilton accepted and reviewed
25 Appellant's Application. (Ex. 7.) After doing so, J. Hamilton issued a CHRB Form 83 "Notice
26 of Refusal of License" stating that the CHRB refused Appellant's Application due to
27 Appellant's conviction for a "crime punishable by imprisonment in the State or Federal prison,
28 or conviction for a crime involving moral turpitude." (Id.)

1 **XIII.**

2 Upon receiving the Notice of Refusal of License, Appellant appealed the CHRБ’s
3 refusal to issue Appellant a license. (Ex. 7.) On March 28, 2017, the CHRБ set this Appeal for
4 hearing on April 21, 2016 at Los Alamitos Race Course. (Ex. 5.)

5 **V. ISSUES ON APPEAL AND CONTROLLING LAW**

6 When considering the denial of a license on the grounds that the applicant committed an
7 act or has been convicted of a crime, the following criteria are relevant in evaluating
8 Appellant’s rehabilitation and fitness for licensure:

- 9 (1) The nature and severity of the act(s) and/or offense(s), including its relation to
10 horse racing or pari-mutuel wagering and the protection of the public; (2) the total
11 criminal record, including evidence of any act(s) and/or offense(s) committed
12 subsequent to the act(s) or offense(s) under consideration as grounds for denial,
13 suspension or revocation which also could be considered grounds for denial,
14 suspension, or revocation under Business and Professions Code sections 480 or
15 490; (3) the time that has elapsed since commission of the act(s) or offense(s); (4)
16 the extent to which the person seeking licensure or the licensee has complied with
17 any terms of parole, probation, restitution or any other sanctions lawfully imposed
18 against the person or licensee; (5) the credibility of the person seeking licensure
19 or the licensee, and his or her acceptance of responsibility and remorse for the
20 conduct; and (6) evidence, if any, of rehabilitation submitted by the person
21 seeking licensure or by the licensee. (Cal. Code Regs. Tit. 4 § 1489.2.)

22 Appellant must demonstrate, by a preponderance of the evidence, that he meets the
23 necessary licensure requirements. (See, Cal. Code Regs. Tit. 4 § 1764 [“The burden shall be on
24 the appellant to prove the facts necessary to sustain the appeal.”], Cal. Evid. Code § 115,
25 *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784, *Owen v. Sands*
26 (2009)176 Cal.App.4th 985, 989.)

27 “Preponderance of the evidence means evidence that has more convincing force than
28 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].)

Because this Appeal concerns the denial of a license due to previous “bad acts,”
Appellant must provide sufficient evidence of rehabilitation and overall fitness for licensure.

1 **VI. SUMMARY OF EVIDENCE PRESENTED**

2 **A. Summary of Testimony Presented by Appellant.**

3 In support of demonstrating his fitness for licensure, Appellant called Lydia M. Rivas
4 (“Rivas”) and Lisa Mundy (“Mundy”) to provide testimony concerning his rehabilitation and
5 fitness for licensure. Appellant further testified on his own behalf.

6 **1. The Testimony of Lydia M. Rivas.**

7 Rivas is Appellant’s secretary and bookkeeper. (Hearing Transcript (“H.T.”) at p. 7,
8 15.) Rivas performs those same functions for other trainers across California. (Id.) Regarding
9 Appellant’s character, Rivas testified that Appellant is a “very good man.” (H.T. at p. 10)
10 Appellant acknowledges that defrauding Everest and breaching his fiduciary duty owed to
11 Everest as conclusively determined by the Litigation (the “Conduct”) “was wrong.” (Id.)
12 Appellant “just went the wrong way for a minute or two and now he’s back.” (Id.)

13 However, when asked about the Litigation and whether she believed Appellant’s
14 Conduct was wrong, Rivas stated she “truthfully [didn’t] believe” Appellant did anything
15 wrong. (H.T. at p. 12.) When asked to clarify how Appellant “lost his way,” Rivas was unable
16 to do so. (Id.)

17 Regarding Appellant’s rehabilitation, Rivas explained that Appellant seems remorseful
18 about his Conduct because he “seems down and out and...misses the horses.” (H.T. at p. 13.)
19 Rivas also was unaware as to whether Appellant had changed his business practices after the
20 Litigation as they “don’t do that much business together.” (Id. at 14.)

21 Finally, in support of Appellant’s fitness for licensure, Rivas submitted letters from
22 Appellant, Ronald McAnally, and Miguel Delgado. (Exs. 1, 2, 3.) It is not lost on this Officer
23 that Rivas currently performs bookkeeping services for both Ronald McAnally and Miguel
24 Delgado. (H.T. at p. 14-15.)

25 **2. The Testimony of Lisa Mundy.**

26 In further support of his fitness for licensure, Appellant called Mundy to testify on his
27 behalf. Mundy has been a friend of Appellant for approximately seven years and has never had
28 any business relationship with Appellant. (H.T. at p. 16.) However, Mundy did not know

1 Appellant when the Conduct occurred. (H.T. at p. 22.)

2 Mundy discussed the Litigation's outcome with Appellant. (H.T. at p. 23.) Mundy
3 explained that Appellant initially denied that his conduct was wrong and denied the Litigation's
4 findings of fact. (H.T. at p. 23.) However, as "time went on and he [Appellant] could reflect,"
5 Appellant accepted the Litigation's allegations and wanted to "grow and never let it [the
6 Litigation] happen again." (Id. at p. 24.)

7 Concerning Appellant's rehabilitation, Mundy believes the income Appellant lost in
8 purses and day-fees during his "thirteen-month probation" coupled with the Litigation's
9 judgment are evidence that Appellant "paid his debt to society." (H.T. at p. 16-17.) Moreover,
10 if granted a license, Appellant can come back and be a positive example because "he is an asset
11 to racing" since "he was an inspiration for a television show and is really good with the public."
12 (Id. at p. 18.)

13 However, when asked whether anything could be viewed as more detrimental to horse
14 racing than Appellant's Conduct, Mundy admitted Appellant's conduct "goes to the core of the
15 honesty of the industry" and was "bad for racing." (H.T. at p. 27.)

16 **3. Testimony Provided by Appellant.**

17 Regarding Appellant's testimony, he testified that he:

18 (1) [S]till holds Everest responsible for the Conduct and the subsequent Litigation
19 (H.T. at p. 33); (2) believes he did nothing wrong in his dealings with Everest
20 (H.T. at p. 35); and (3) only regrets buying the horses from Everest, but maintains
Everest is completely at fault for what transpired (H.T. at p. 34, 37.)

21 **B. Summary of Testimony the CHRB Presented.**

22 The CHRB did not call any witnesses concerning Appellant's fitness for licensure. (See
23 e.g., *Hora v. San Francisco* (1965) 233 Cal. App. 2d 375, 379 [The burden of proof is on the
24 applicant and it is "not necessary that it be shown that the applicant's character is faulty."], see
25 also, *In re Glass* (2014) 58 Cal. 4th 500 [Applicant must establish a prima facie case of his or
26 her good moral character and demonstrate his or her rehabilitation, if necessary.])

27 **VII. DISCUSSION**

28

1 Based upon the evidence presented, Appellant failed to meet the rehabilitation criteria
2 set forth in Cal. Code Regs. Tit. 4 § 1489.2 (“Section 1489.2”). Thus, Appellant cannot make
3 the necessary showing of “rehabilitation” to permit Appellant to be licensed as trainer in the
4 State of California.

5 As discussed above, Section 1489.2. provides the following relevant criteria in
6 evaluating Appellant’s rehabilitation and fitness for licensure:

- 7 (1) The nature and severity of the act(s) and/or offense(s), including its relation to
8 horse racing or pari-mutuel wagering and the protection of the public; (2) the total
9 criminal record, including evidence of any act(s) and/or offense(s) committed
10 subsequent to the act(s) or offense(s) under consideration as grounds for denial...;
11 (3) the time that has elapsed since commission of the act(s) or offense(s); (4) the
12 extent to which the person seeking licensure or the licensee has complied with
any terms of parole, probation, restitution or any other sanctions lawfully imposed
against the person or licensee; (5) the credibility of the person seeking licensure
or the licensee, and his or her acceptance of responsibility and remorse for the
conduct; and (6) evidence, if any, of rehabilitation submitted by the person
seeking licensure or by the licensee.

13 Concerning Section 1489.2’s nature and severity element, the severity of Appellant’s
14 Conduct is without question. Indeed, defrauding another licensee and breaching a fiduciary
15 duty owed to another licensee “embodies the definition of conduct detrimental to racing” which
16 is why the CHRB requires its participants to be licensed. (Ex. 9 at p. 6.)

17 Moreover, Appellant’s Conduct is obviously an act of moral turpitude committed in
18 connection with horse racing, “which was fraudulent and in violation of a trust or duty.” (Cal.
19 Code Regs. Tit. 4 § 1489(g).)

20 Due to the severity of Appellant’s Conduct and its close relation to horse racing, Section
21 1489.1’s severity prong does not support a finding of rehabilitation.

22 As to Section 1489.2’s acceptance and remorse prong, Appellant shows absolutely no
23 remorse and refuses to take responsibility for his Conduct. In fact, Appellant testified that he:
24 (1) still blames Everest for the Litigation; (2) did not do anything wrong while refusing to
25 accept any responsibility; and (3) only regrets purchasing the horses from Everest. (H.T. at p.
26 34-37.) Even more troubling is the fact that Appellant is apparently only remorseful that he
27 “got caught” and about the resulting consequences.

1 While this Officer understands English is not Appellant's first language, the questions
2 asked of Appellant were translated to Spanish. (H.T. at p. 33-35.) As such, this Hearing Officer
3 finds it extremely difficult to believe Appellant did not understand the questions being asked in
4 both and Spanish and English. Moreover, during the 2015 hearing to revoke Appellant's
5 license, he unequivocally asserted that he "won" the Litigation and denied any wrongdoing.
6 (Ex. 8 at p. 5.)

7 Simply put, Appellant failed to show any remorse, and even more concerning, refuses to
8 accept any responsibility for the Conduct. Thus, Appellant plainly fails to meet Section
9 1498.2's acceptance and remorse prong.

10 As to evidence of rehabilitation, Appellant failed to submit any. The letters of support
11 from Ronald McAnally and Miguel Delgado provide no evidence concerning Appellant's
12 rehabilitation and are nothing more than speculative statements. (Exs. 2, 3.)

13 Additionally, neither Mundy nor Rivas presented rehabilitation evidence. In fact, Rivas
14 admitted to not knowing whether Appellant changed or improved his business practices. (H.T.
15 at p. 13, 14, 16, 22.) Mundy has never been involved in a financial and/or business transaction
16 with Appellant. (Id.) Rivas' and Mundy's testimony that Appellant is a "good man who misses
17 the horses" and is an asset to racing who is "really good with the public" is not evidence that
18 Appellant is "rehabilitated" and fit for licensure.

19 For these reasons, this Hearing Officer finds that Appellant failed to submit any
20 evidence of rehabilitation.

21 While this Hearing Officer acknowledges Appellant's history is largely violation free
22 and that Appellant claims to have paid the Litigation's judgment in full, these two Section
23 1489.2 factors do not overcome the lack of remorse and rehabilitation.

24 Simply put, there are very few examples of conduct more detrimental to horse racing
25 and public perception than Appellant's Conduct here. Perhaps most troubling is Appellant's
26 lack of remorse and regret as he continues to assert he did nothing wrong and only regrets
27 "selling the horses to Everest." Accordingly, Appellant failed to make the required showing of
28 "rehabilitation" to permit Appellant to be licensed as trainer in the State of California.

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VIII. CONCLUSION

The evidence presented and admitted during the April 21, 2017 fitness hearing is sufficient to reach a decision in this matter. Because of the severity of Appellant's Conduct, Appellant's refusal to accept responsibility for his conduct, total lack of remorse, and failure to provide any evidence of "rehabilitation," Appellant failed to demonstrate the necessary fitness to be licensed as a Trainer in the State of California.

WHEREFORE, it hereby recommended that Appellant's Appeal be denied, and that Appellant's Application for License be denied.

Dated: June 8, 2017



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