

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:

**Appeal of the Board of Stewards Official
Ruling #18, Alameda County Fair, dated
July 14, 2011**

**LAURA FRANKLIN
Appellant**

**SAN FRANCISCO EQUINE, INC.
Cross-Appellant**

Case No. SAC 11-0020
OAH No. 2012031005

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 22, 2013.

IT IS SO ORDERED ON January 17, 2013.

CALIFORNIA HORSE RACING BOARD
David Israel, Acting Chairman

A handwritten signature in black ink, appearing to read 'Kirk E. Breed', written in a cursive style.

Kirk E. Breed
Executive Director

BEFORE THE
CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA

In the Matter of the Appeal of Stewards
Official Ruling No. 18, Alameda County
Fair, dated July 14, 2011:

LAURA FRANKLIN,

Appellant,

SAN FRANCISCO EQUINE, INC.,

Cross-Appellant.

CHRB Case No. SAC 11-0020

OAH No. 2012031005

PROPOSED DECISION

Appellant Laura Franklin and cross-appellant San Francisco Equine, Inc., agreed that this matter could be decided upon the basis of the written record and the parties' briefs. They waived a hearing. The California Horse Racing Board is not a party to this proceeding. A briefing schedule was arranged in consultation with Presiding Administrative Law Judge Cheryl A. Tompkin. Upon submission of the final briefs, the matter was assigned for decision to Michael C. Cohn, Administrative Law Judge, State of California, Office of Administrative Hearings.

Appellant Laura Franklin was represented by A. Scott Brown, Attorney at Law.

Cross-Appellant San Francisco Equine, Inc., was represented by James L. Ghidella, Attorney at Law.

Pursuant to the agreed briefing schedule, the parties filed opening briefs on September 14, 2012. San Francisco Equine filed its responsive brief on October 1, 2012, and Franklin filed her responsive brief on October 2, 2012. San Francisco Equine filed its reply brief on October 5, 2012, and Franklin filed her reply brief on October 8, 2012.

The matter was deemed submitted for decision on October 8, 2012.

BACKGROUND

San Francisco Equine, Inc., (SFE) filed with the California Horse Racing Board a complaint against Laura Franklin alleging unpaid veterinarian services of \$19,055.24 in violation of Board Rule 1876. Following an evidentiary hearing, in Official Ruling No. 18 of the Board of Stewards, Alameda County Fair, dated July 14, 2012, the stewards held that

Franklin owed SFE \$9,728.47 for services rendered during the two-year period between May 23, 2009, and May 23, 2011. Franklin filed a timely appeal asserting that she owed nothing to SFE. SFE filed a timely appeal asserting that Franklin owed the full amount claimed of \$19,055.24.

SUMMARY OF EVIDENCE

On May 23, 2011, San Francisco Equine, Inc., filed a complaint with the California Horse Racing Board against Laura Franklin alleging unpaid veterinarian services of \$19,055.24 in violation of Board Rule 1876. A hearing on the complaint was held before the Board of Stewards on June 26, 2011. At the hearing the stewards heard sworn testimony from Kim Lewis Kuhlman, D.V.M., Laura Franklin, and her husband Jim Franklin and received in evidence a number of documents, one of which was a 44-page itemized statement from SFE to Franklin that showed some 800 separate charges billed to Franklin. Another document received in evidence was a June 15, 2011 email sent by California Horse Racing Board counsel Robert Miller to all California stewards advising them "of the proper interpretation of Rule 1876." The evidence before the stewards revealed the following:

Franklin is a horse owner licensed by the California Horse Racing Board. Between May 7, 2007, and November 16, 2010, SFE performed veterinary services for 15 horses trained by Armando Lage and owned in whole or in part by Franklin. Franklin never disputed any of the charges billed by SFE. Franklin made periodic payments to SFE for these services, the last of which was a credit card payment made on May 25, 2010. The outstanding balance on the account was \$19,055.24.

DISCUSSION

A. The Standard of Review

Pursuant to Rule 1761, every decision of the stewards except a decision concerning disqualification of a horse may be appealed to the California Horse Racing Board. Pursuant to Business and Professions Code section 19517, subdivision (a), the board may overrule a stewards' decision if a preponderance of the evidence shows the stewards mistakenly interpreted the law, if new evidence of a convincing nature is produced, or if the best interests of racing and the state may be better served.

B. The Applicable Law

Rule 1876, Financial Responsibility, provides, in part:

- (a) No licensee shall willfully and deliberately fail or refuse to pay any moneys when due for any service, supplies, or fees connected with his or her operations as a licensee, nor shall he or she falsely deny any such amount due or the validity of the

complaint thereof with the purpose of hindering or delaying or defrauding the person to whom such indebtedness is due.

(d) The Board will consider only those financial responsibility complaints which meet the following criteria:

(1) The complaint involves services, supplies or fees that are directly related to the licensee's California racetrack operations; and

(2) The debt or cause for action originated, or the civil judgment was issued, in this state within one year of the filing of the complaint.

C. Review

1. The stewards' decision

In their decision, the stewards stated that they had two issues to decide: whether SFE's complaint had been timely filed and whether Franklin actually owed any money to SFE. The stewards went on to state that the "first issue centers around the term, 'Cause of Action,' along with the one year time frame for the filing of a financial complaint" contained in Rule 1876. The stewards quoted the pertinent part of that rule as follows: ". . . (2) the debt or cause of action originated, or the civil court judgment was issued, in this State within one year of the filing of the complaint."

The stewards concluded that SFE's complaint was timely filed within the meaning of Rule 1876, reasoning, "If the cause of action in this instance is construed as Franklin's failure to continue to make payments on her account then the breach occurred after May 24, 2010 which is within the one year time frame prior to the filing of the complaint. This then ensures that the complaint was filed in a timely fashion and puts the complaint in compliance with the provisions of rule #1876." They rejected Franklin's assertion that the complaint was not timely filed.

Moving to the second issue, the stewards noted that "Franklin stated that according to [Code of Civil Procedure section 339, the] statute of limitations for oral contracts is two (2) years while [SFE] maintained that Franklin had an open ongoing account and the statute of limitations on such an account is four years." Without further discussion or explanation, the stewards then stated, "After researching the matter the Stewards determined that the arrangement between Franklin and [SFE] should be considered an oral contract rather than a written contract and that the statute of limitations would then be two years to collect the debts attached to the account." The stewards then concluded that Franklin was liable to SFE

for all services performed within the two years preceding the filing of the complaint on May 23, 2011. It calculated those charges as \$9,728.47 and directed Franklin to satisfy this obligation with SFE.

The stewards' interpretation of Rule 1876 appears to have been based upon the opinion letter board counsel Robert Miller had emailed to all stewards on June 15, 2011. In his opinion letter, Miller wrote:

... all Stewards should be made aware of the proper interpretation of Rule 1876, specially, subsection (d)(2).

Subsection (d)(2) states, "(T)he **debt or cause of action** originated, or a civil court judgment was issued, in this State within one year of the filing of the complaint." (Emphasis added.) The matters you are adjudicating under Rule 1876 are contracts, either written or oral.

There is a distinct difference between the origination of a "debt" and the origination of a "cause of action." In contract law, the two legal principles are not the same and do not occur on the same date.

A **debt**, for purposes of Rule 1876, originates or is created on the date when the goods or services are provided to a CHR licensee. [Emphasis in original.]

A **cause of action** originates or is created when there is a breach of a legal duty under the terms of the contract. [Emphasis in original.]

Counsel then went on to give examples of how these two principles interacted. Nowhere in the opinion letter did counsel discuss the concept of book accounts.

2. The parties' arguments

In her appeal, Franklin contends that SFE's complaint was untimely and should have been dismissed. She points out that Rule 1876, subdivision (d)(2), does not refer to a "cause **of** action," as both the stewards and Miller had written, but rather to a "cause **for** action." She asserts this distinction is important, rendering both the legal definition of a "cause of action" irrelevant and the stewards' conclusion that SFE's "cause of action" for breach of an oral contract originated when Franklin stopped making payments on the account in error.

"Cause of action," Franklin argues, "is a well understood legal term of art that encompasses the numerous specific and legally defined bases for filing a civil court action," while one must look to the language of Rule 1876 to determine what the board intended

when it used the phrase “cause **for** action” instead of the phrase “cause **of** action.” Since subdivision (a) provides that a licensee violates the rule when he or she fails “to pay any moneys when due,” it is this failure, she asserts, that gives rise to a “cause for action” under the rule. In sum, Franklin contends:

From the plain reading of 1876, the following is the only logical interpretation of the Rule’s meaning and purpose: In order to bring an action pursuant to 1876, a claimant must . . . establish that the debt forming the basis for the 1876 complaint is no older than a year from the date that the Complaint is filed, and if the debt is outside of the one year limitations period, the Stewards lack authority and jurisdiction until the claimant returns with a judgment from Superior Court (subsection (d)).

Therefore, since all of the services performed by SFE occurred more than a year before the complaint was filed, the “debts” were all outside this one year limitation and the stewards lacked jurisdiction to rule on the complaint.¹

In its appeal, SFE contends the stewards misapplied the law when they limited SFE’s recovery to the previous 24 months of charges. SFE contends that its billing ledger constituted a “book account” under California law. Citing 3 Witkin, California Procedure, Actions, section 541, and *R.N.C., Inc. v. Tsegeletos* (1991) 231 Cal.App.3d 967, SFE contends . that a “cause of action” on a book account commences on the date of the last new item on the account, either a new charge or a payment. Since both the last charge on the account and the last payment on the account were within one year of SFE’s May 23, 2011 complaint, the complaint is timely and all charges on the account are subject to the stewards’ jurisdiction: “‘The action is not barred piecemeal as to the several items, because in an action on a book account they are all to be regarded as part of one entire account and cause of action.’ Witkin, *supra*, Sec. 541 quoting *Egan v. Bishop* (1935) 8 Cal.App.2d, 119, 123.” Therefore, SFE maintains, it should have been awarded the full amount due on the account.

Franklin counters that, “Any reliance or reference by SFE to a theory based upon a ‘cause of action’ for an ‘open book account’ . . . ignores the plain language of the Rule. Analysis and determinations as to what is and what is not an open book account belong, like this case, in Superior Court and not before the Board.” Further, avers Franklin, “There is no reference in the Rule to breaches of contracts or existence of accounts. Rule 1876 merely states that if a debt is not paid and pertains to horse racing, the Licensee has violated 1876 and a cause for an 1876 action arises. All other legal theories of recovery are irrelevant and inapplicable.”

¹ In her responsive brief, Franklin acknowledged that one “debt” did occur within one year of SFE’s complaint – a \$21.00 charge on November 19, 2010 – and that the stewards did have authority to consider that charge, but only that charge.

3. Analysis

I

Although Franklin has characterized “cause **of** action” as “a well understood legal term of art,” the term has no single meaning. “A ‘cause of action’ may mean one thing for one purpose and something different for another. [Citations omitted.]” (Black’s Law Dict., (4th ed. 1957) p. 279.) The same dictionary entry provides a variety of definitions for “cause of action,” including such diverse concepts as “act causing injury,” “action,” “breach of contract,” “breach of duty,” “claim,” “concept of law of remedies,” “concurrence of facts giving rise to enforceable claim,” “right of action or right of recovery,” “right to prosecute an action with effect,” “right to enforce obligations,” and “wrong committed or threatened.” Franklin’s contention that “cause of action” refers only to the specific bases for filing a civil court action is not supportable. And while neither party has been able to find a legal definition of “cause **for** action,” there is no reason to believe that term is not essentially synonymous with at least some of the many meanings of “cause of action.” Franklin’s interpretation of the phrase “cause for action” in Rule 1876 as applying only to debts actually incurred within the 12 months preceding the filing of the claim is too narrow.

While the stewards may not have recognized that Rule 1876 refers to a “cause **for** action” rather than a “cause **of** action,” their conclusion that SFE’s “cause” for complaint under the rule originated when Franklin last made a payment on the account was not a mistake of law. Their decision that the complaint was timely filed must be upheld.

II

However, the stewards’ conclusion that SFE was entitled to reimbursement only for charges incurred within two years from the date of the complaint based upon the statute of limitations for an oral contract did not constitute a correct interpretation of the facts and law.

Having received board counsel’s opinion letter concerning the interpretation of Rule 1876 just days before the hearing on SFE’s complaint, the stewards understandably relied upon it for guidance. In the opinion letter, counsel stated, “The matters you are adjudicating under Rule 1876 are contracts, either oral or written.” In their decision, the stewards stated that “after researching the matter,” they “determined that the arrangement between Franklin and [SFE] should be considered an oral contract rather than a written contract” It appears the stewards felt these were the only choices open to them. Counsel had made no reference in the opinion letter to the possibility that the stewards might have to determine whether a claim was on an open book account, and although they noted in their decision that SFE had contended that this was the nature of its claim, the stewards never addressed that contention in their decision.

SFE’s ledger showing the debts incurred by Franklin and the payments made by her constitutes a book account, which is defined as “‘a detailed statement, kept in a book, in the nature of debit and credit, arising out of contract or some fiduciary relation’.” (*Joslin v. Gertz* (1957) 155 Cal.App.2d 62, 65, citation omitted.) “A book account is described as

'open' when the debtor has made some payment on the account, leaving a balance due." (*Interstate Group Administrators, Inc. v. Cravens, Dargan & Co.* (1985) 174 Cal.App.3d 700, 708.) "[T]he most important characteristic of a [claim] brought to recover a sum owing on a book account is that the amount owed is determined by computing all of the credits and debits entered in the book account." (*Ibid.*) All items in the account are considered "one single and indivisible liability." (*R.N.C., Inc. v. Tsegeletos* (1991) 231 Cal.App.3d 967, 972, quoting 1 Am.Jur.2d, Accounts and Accounting, section 4, pages 373-374.)

SFE made a valid and timely claim on an open book account. The stewards' failure to recognize the true nature of the claim was a mistake of fact and law. Their decision limiting reimbursement to SFE to debts incurred in the two-year period preceding the claim cannot be upheld.

CONCLUSIONS OF LAW

A review of the record reveals that substantial evidence supports the stewards' conclusion that SFE's claim was timely, but not their conclusion that the claim was subject to the two-year statute of limitations for oral contracts. The facts actually showed that the claim was to be treated as a claim on an open book account, not an oral contract, and that the two-year statute did not apply.

ORDER

Official Ruling No. 18 of the Board of Stewards, Alameda County Fair, dated July 14, 2011, against Laura Franklin is modified to read as follows:

Ruling No. 18

In the matter of:

Financial Complaint #11GG181
San Francisco Equine, Inc. v. Owner Laura Franklin

It is determined that Owner **LAURA FRANKLIN** is indebted to San Francisco Equine, Inc. in the amount of \$19,055.24, which represents all charges for services rendered between May 7, 2007, and November 16, 2010.

Laura Franklin is hereby directed to satisfy the obligation to San Francisco Equine, Inc., either by payment in full or, if acceptable to both parties, by payment agreement, by a date that shall be set by the California Horse Racing Board. Should the Board of Stewards thereafter be formally notified by San Francisco Equine, Inc., that Franklin failed to resolve this obligation by the date set by the board, she will be deemed to be in violation of California Horse Racing Board Rule 1876 (Financial Responsibility), which shall result in suspension of her California Horse Racing Board license privileges.

DATED: November 5, 2012

Michael C. Cohn

MICHAEL C. COHN
Administrative Law Judge
Office of Administrative Hearings

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