

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:

Fitness for Licensure

GENNADI DOROCHENKO
Applicant

Case No. SAC 10-0020

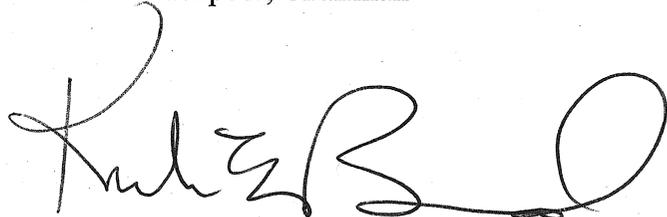
DECISION

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 29, 2010.

IT IS SO ORDERED ON June 22, 2010.

CALIFORNIA HORSE RACING BOARD
Keith Brackpool, Chairman

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

Kirk E. Breed
Executive Director

FITNESS FOR LICENSURE

Gennadi Dorochenko Lic. # 256360
Applicant

Case No. SAC 10-0020

PROPOSED DECISION

HEARING

This matter came for hearing in the Executive Conference Room at Golden Gate Fields Race Track, Albany, California on May 19, 2010. Assistant Executive Director Richard Bon Smith acted as Referee for the Board pursuant to Section 1414, Title 4, California Code of Regulations.

Applicant Gennadi Dorochenko (Dorochenko) appeared and was not otherwise represented by Counsel. Dorochenko brought no witnesses. He presented one letter of recommendation (see below). The proceedings were tape recorded; court reporter Christine Niccoli transcribed.

Senior Special Investigator Gabriel Palomar (Palomar), assisted by Supervising Special Investigator Anne Glasscock, 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 (Dorochenko's application package and criminal file) was introduced by Palomar as an exhibit (Exhibit A) to the matter and subjected to discussion, along with testimony from the applicant. A letter of reference from licensed owner Howard Bumford (CHRB #289213) was presented by Dorochenko and entered into the record as Defendant's Exhibit 1. Upon receipt of the testimonial and documentary evidence, and concluding the discussion, the record was closed and the matter deemed submitted.

BACKGROUND

Gennadi Dorochenko applied for re-licensure as a trainer on March 25, 2010, having previously held CHRB license # 256360 since 1998. His license application disclosed a criminal conviction within the past 36 months for violation of Penal Code 32, Accessory to Murder. CHRB investigations staff appropriately issued a Refusal of License in accordance with CHRB Rules and Directive 01-09. Documents from the Superior Court of California, County of Contra Costa indicated that Dorochenko had been imprisoned (under Electronic Home Detention) for 210 days beginning September 21, 2007 and had served formal probation from the end of that term through March 21, 2010. The Board of Stewards at the Solano County Fair, on July 16, 2008, had suspended all Dorochenko's

licenses and privileges for the term of his licenses. The aforementioned Notice of Refusal of License notified Dorochenko of his right to appeal the refusal and request a fitness hearing. The hearing held May 19, 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 Dorochenko and CHRB Investigators Palomar and Glasscock, and with no indication of evidence to the contrary, the following are taken as accepted findings of fact.

I.

A complaint was filed against licensee Gennadi Dorochenko by CHRB Investigator Gabriel Palomar on January 6, 2008, for violation of Rule 1489(a), which states in part that, "The Board...may deny a license to any person who has been convicted of a crime punishable by imprisonment..." The complaint scheduled a hearing for January 20, 2008; but the hearing was not held at that time, and was postponed three times until July 12, 2008. A revised complaint added violation of Rule 1902 (a) and (b), which state in part, "No licensee shall engage in any conduct...which by its nature is detrimental to the best interests of horse racing including...: indictment or arrest for a crime...punishable by imprisonment..."

The original complaint indicated that Dorochenko would "...not fit the criteria for licensing until 09/21/2011." The revised complaint removed the relicensing date, stating only, "...Mr. Dorochenko does not fit the criteria for licensing."

II.

Documents from the Superior Court of California, County of Contra Costa, dated September 21, 2007, indicate that Dorochenko had been convicted of the offense of violation PC 32 (Penal Code), which states, "Every person who, after a felony has been committed, harbors, conceals or aids a principal in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction or punishment, having knowledge that said principal has committed such felony or has been charged with such felony or convicted thereof, is an accessory to such felony."

The following terms were imposed:

- Formal Probation Granted for a period of 3 years from the date.
- Standard Terms.
- Jail imprisonment for 77 days and 210 days Electronic Home Detention.

III.

CHRB Senior Special Investigator Palomar entered into evidence the entire package of documents relevant to Dorochenko and his application as evidence. This included a completed application form, Superior Court and Contra Costa County Sheriff's records, and the applicable CHRB Investigative documents, Notice of Refusal of License, Notices of Hearing, Board of Stewards Ruling, and Dorochenko's handwritten request for a fitness hearing.

IV.

Dorochenko was arrested in December 2006 for hiding and assisting his minor son, Alexander, to flee the country to avoid prosecution for a murder that occurred in 2005. Contra Costa Sheriff's investigative files show that Alexander Dorochenko had fled the country in early December 2006, and that Gennadi Dorochenko had facilitated and abetted that flight. Gennadi Dorochenko was arrested at his home, without incident, on December 15, 2006.

V.

Dorochenko assumed responsibility for his behavior, although he suggested that he had plead no lo contendre and accepted the sentence to avoid a longer term if he had gone to court and been convicted. His record as a licensee is fairly clean: a couple of minor financials (satisfactorily resolved) and one Class VI positive (in Maryland) as a trainer. Indications from his letter of reference (owner Bumford has an unmarked record with the Board) and others around the track are that he is a good horseman who cares for his horses and keeps to himself. He asserted that he had completed his probation, was clear of all fines and debts, and understood the terms and conditions of his license refusal.

V.

The final Superior Court document states that Dorochenko's probation was reduced to a term of two years and six months from his conviction date, ending March 21, 2009. During his probation, Dorochenko has had no additional criminal record.

APPLICABLE RULES

CHRB 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.

Rule #1902 (Conduct Detrimental to Horse Racing) states in part:

No licensee shall engage in any conduct which by its nature is detrimental to the best interests of horse racing...

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

b. Felony Convictions...: A license applicant is not eligible for licensing for a term of (5) years following the termination of the parole and/or probation of the felony conviction...

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.

CHRB Directive 01-99 (subsequently superseded by Directive 01-09), which was in place at the time of Dorochenko's nolo contendere plea, stated in part re felonies that "...The license may be approved if ONE (1) year has passed since the completion of the term, including parole and/or probation..."

DETERMINATION OF ISSUES

Dorochenko's offense met all criteria in the CHRB rules to cause his licenses to be suspended and re-licensure to be denied pending the completion of his probation and a period thereafter. The CHRB Investigative staff emphasized the severity of the case for which Dorochenko was convicted, and pointed out that under the terms of Directive 01-09, he would not be eligible for licensure until 2015.

Dorochenko stated that he had no knowledge of his son's affairs or the son's guilt or innocence as to the murder he would have been charged with had Dorochenko not gotten involved. He has no other criminal history, and his license infractions have been minor and all timely and fairly resolved.

At issue for purposes of this fitness hearing is whether or not it would be appropriate to waive the terms of Directive 1-09 as regards Dorochenko's licensure after the term of probation has ended or to impose the full term of five years before consideration for licensure.

Directive 01-09 was written strongly to minimize the ability/authority of CHRB investigations staff from permissively approving licenses for recent criminals without a thorough vetting from executive management. The five-year term included in the Directive is overly severe in this case. Dorochenko committed no act of violence, moral turpitude, or risk to anyone associated with horse racing. He criminally acted to protect his son. Given his overall record in racing, he seems unlikely to endanger the public or horse racing participants in any way. However, the severity of the situation cannot be ignored. The previously applicable Directive provided that "...if there is a question about

the refusal, the Director and/or his designee may be contacted for review and approval... (and)...a fitness hearing should be held....” The current Directive places the onus on the applicant to request such a hearing.

CONCLUSION/PROPOSED DECISION

The evidence presented at the fitness hearing is sufficient to reach a conclusion in this case. Mr. Dorochenko has a satisfactory license history and appears to be little to no risk to the horse racing industry and enclosure. The terms of Directive 01-09 provide the fitness hearing officer discretion to propose a decision in the best interest of the Board, the public and the horse racing industry.

It is therefore recommended that Gennadi Dorochenko be allowed to apply to be licensed as a Trainer in accordance with CHRB Rules # 1481 and 1485. (d), under the following condition:

Mr. Dorochenko’s application for licensure would be considered only after one year has passed from the successful completion of the terms of his felony probation, that is, no sooner than March 21, 2011.

June 2, 2010
Sacramento, California



Richard Bon Smith, Hearing Officer

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