

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:

Fitness for Licensure

JOEL ARAGON

CHRB License #811137

Applicant

Case No. SAC 10-0058

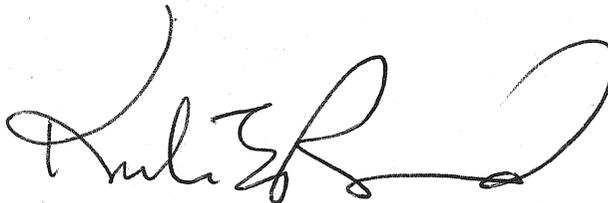
DECISION

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 21, 2011.

IT IS SO ORDERED ON January 20, 2011.

CALIFORNIA HORSE RACING BOARD
Keith Brackpool, Chairman



Kirk E. Breed
Executive Director

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_____)	

PROPOSED DECISION

This matter was heard on December 15, 2010 by C. Scott Chaney, a Hearing Officer designated under California Horse Racing Board rule 1414 (Appointment of Referee) at Hollywood Park Race Track in Inglewood, CA.

The Appellant, Joel Aragon, was not represented by counsel.

The California Horse Racing Board (hereinafter "CHRB") was represented by CHRB Senior Investigator Jim Hamilton.

Also present at the hearing were trainer Blake Heap (by telephone), assistant trainer Jim Anderson (by telephone) and pony rider Cesar Aguirre (Appellant's father). The proceedings were recorded by court reporter Barbara Weinstein.

PROCEDURAL BACKGROUND

On July 23, 2010, Appellant Joel Aragon (hereinafter "Appellant" or "Mr. Aragon") applied for a CHRB license. On the application, he truthfully answered "yes" to the question inquiring as to whether he had been convicted of an offense by a court. Upon receiving the application and noting the conviction, Investigator Hamilton (hereinafter "Mr. Hamilton") requested that Mr. Aragon provide further documentation. On July 25, 2010, Mr. Hamilton denied the application based on a felony conviction for domestic violence. Mr. Aragon appealed that automatic denial and requested a formal fitness for licensure hearing. Both parties were noticed and the hearing was scheduled for December 15, 2010. On that day, the hearing was called to order at 9:00 a.m. in accordance with the notice supplied to all parties. The CHRB submitted documentary evidence relevant to this case, while Appellant presented oral testimony in the form of witnesses, which included himself. The record was closed and the matter deemed submitted on December 15, 2010.

LIST OF EXHIBITS

CHRB Exhibit #1 – CHRB Notice of Refusal of License form, Mr. Aragon’s license application, relevant court docket, letter from Mr. Aragon and the Notice of Hearing document.

CHRB Exhibit #2 – CHRB Directive 01-09, dated January 6, 2009, titled “License Refusals and Denials.”

FACTUAL FINDINGS

I

On October 29, 2009, Mr. Aragon pled nolo contendere to a domestic violence charge which stemmed from a fight with his brother-in-law after an argument.

II

On November 19, 2009, Mr. Aragon was sentenced to five years formal probation (ending on November 19, 2014) and 365 days in the Los Angeles County jail.

III

On May 7, 2009, after approximately six months in jail, Mr. Aragon was released and placed under the supervision of a probation officer.

IV

As part of the terms of his probation, Mr. Aragon is required to attend meetings on the topic of domestic violence (which he continues to do) and is required to find gainful employment.

V

On July 23, 2010, Mr. Aragon applied for a hotwalker’s license from the CHRB, which is technically defined as the license category of stable employee.

VI

On July 25, 2010, in accordance with the CHRB Rules and Regulations and pursuant to a CHRB Directive on these matters, Mr. Aragon was refused a license.

APPLICABLE LAWS AND REGULATIONS

California Horse Racing Board rule 1489. Grounds for Denial or Refusal of License.

The Board, in addition to any other valid reason, may refuse to issue a license or deny 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. . .

California Horse Racing Board Directive 01-09 “License Refusals and Denials,” dated January 6, 2009.

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 (except as noted above subsection “a”): 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. . .

DISCUSSION OF ISSUES

The issue in this matter is whether the terms of CHRB Directive 01-09 should be waived with respect to Mr. Aragon’s probation. As an initial matter, the CHRB investigative staff appropriately applied the conditions set forth in Directive 01-09 and denied Mr. Aragon’s initial license application based on his current felony probation. Directive 01-09 is very specific in restricting the ability for the CHRB investigators to grant licenses in these matters. It is clearly intended to require that license applicants with recent criminal history be subjected to more scrutiny (and by extension, more due process) than an individual investigator’s assessment as to whether these individuals would be good candidates for licensure. That additional scrutiny is the purpose for this hearing.

Clearly the CHRB has an interest in withholding licenses from certain individuals in order to regulate the industry in a way which promotes fairness, integrity and safety. For example, individuals who do not possess the requisite skills are precluded from procuring a trainer’s license; individuals not employed by associations are prevented from acquiring racing official or valet licenses; and more to the point, those who have been convicted of crimes related to book making cannot be licensed by the CHRB. It is this concern with criminal history and its potential deleterious effect that led to the promulgation of Directive 01-09. Its application, however, is less clear. As stated earlier, the CHRB would certainly not want to license a convicted bookmaker or race fixer, but probably has no interest in barring those individuals with minor traffic infractions. The spectrum of criminal convictions between these two extremes are more difficult, but are guided by the conditions set forth in the Directive. Applied strictly in this case, Mr. Aragon would be precluded from applying for a license until November of

2019 (five years after the term of his probation is set to expire). This appears to be too heavy a burden given the facts of this particular case.

Evidence shows that Mr. Aragon was convicted of a domestic violence felony at the age of eighteen after he had engaged in a physical altercation with his brother-in-law. Since then, he has made amends with his relative, paid all court costs, spent six months in jail, attended domestic violence meetings, maintained contact with his probation officer, and has stayed out of trouble. In fact, he is required to seek gainful employment as a term of his probation, but is precluded from so doing because of the underlying conviction, at least as it applies to the horse racing industry. He could seek other employment, but he has numerous family members in the industry that could provide him with connections with respect to a job and could provide support and supervision once he secures a job. His father, Cesar Aguirre, has worked in the industry for many years as a pony rider and testified that he would provide supervision and guidance in Mr. Aragon's life on the racetrack. Trainer Blake Heap testified that he knows Mr. Aragon and is satisfied with his ability and knowledge such that he would offer him employment should he obtain a license. Furthermore, assistant trainer Jim Anderson testified to Mr. Aragon's good character and work ethic. Lastly, Mr. Aragon himself expressed a willingness to work, a hope to better himself, and a strong desire to provide for his young daughter.

In the final analysis, these types of cases are ultimately judgment calls with respect to whether this is the type of individual that the CHRB should license given their criminal past and potential future. This case is not free of countervailing concerns; those include the fact that the conviction involved domestic violence, that the conviction was slightly more than a year ago, and that Mr. Aragon is a first time applicant for a license. On balance, however, the evidence suggests that this may be the type of individual for which CHRB Directive 01-09 should be waived, giving Mr. Aragon the opportunity to benefit from the horse racing industry and hopefully, for the horse racing industry to benefit from Mr. Aragon.

CONCLUSION/PROPOSED DECISION

Given all of the foregoing, it is recommended that Joel Aragon be permitted to apply to be licensed by the CHRB in the license category of stable employee pursuant to CHRB Rule 1481 (Occupational Licenses and Fees). It is further recommended, however, that said license, pursuant to CHRB Rule 1485 (License Subject to Conditions and Agreements), be contingent upon the successful continuation and completion of the terms of Mr. Aragon's probation.

DATED: January 7, 2010.



C. SCOTT CHANEY
Hearing Officer