

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:

FITNESS FOR LICENSURE

JACKY MARTIN
CHRB License #102193
Applicant

Case No. SAC 10-0054

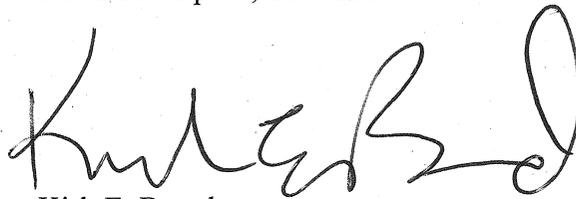
**DECISION ADOPTING PROPOSED DECISION
WITH CLARIFICATION OF PROPOSED SANCTION
(Gov. Code, Section 11517)**

Attached is a copy of the Proposed Decision in the above-titled matter submitted to the California Horse Racing Board ("Board") under provisions of Government Code section 11517. You are advised that the Board considered the proposed decision at its November 9, 2010, meeting and ordered that the applicant is eligible to apply for a jockey license which is only valid through December 31, 2010. As so modified, the Board adopts the Proposed Decision.

This Decision shall become effective on November 17, 2010.

IT IS SO ORDERED ON November 9, 2010.

BY ORDER OF THE CALIFORNIA HORSE
RACING BOARD
Keith Brackpool, Chairman



Kirk E. Breed
Executive Director

**BEFORE THE
CALIFORNIA HORSE RACING BOARD
STATE OF CALIFORNIA**

In the Matter of:

FITNESS FOR LICENSURE HEARING
Date October 27, 2010

Case No. SAC 10-0054

Jacky Martin Lic. # 102193 Exp. 10/2007

Applicant

PROPOSED DECISION

This matter came for hearing in the Stewards' Office at Los Alamitos Race Course, Los Alamitos, California on October 27, 2010. Assistant Executive Director Richard Bon Smith acted as Referee for the Board pursuant to Section 1414, Title 4, California Code of Regulations.

HEARING

Applicant Jacky Martin (Martin) appeared and was not otherwise represented by Counsel. Martin brought several witnesses as noted below. In addition, Los Alamitos Racing Secretary Ron Church presented one letter of recommendation (see below) for consideration. The proceedings were tape recorded; court reporter Barbara Weinstein transcribed.

Supervising Special Investigator Ken Lady (Lady) 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 introduced as exhibits to the matter by Lady included the following:

- Martin's rejected California application package,
- Documents from New Mexico demonstrating the deliberation over his licensure in that jurisdiction,
- Multiple written testimonials from a variety of individuals in the racing world and in Martin's private life,
- Documents related to the criminal convictions and subsequent probation that initiated the California application rejection

Along with testimony from the applicant, several representatives of the Southern California Quarter Horse community appeared on his behalf. Owner R.D. Hubbard stated that Martin was an exemplary performer who brought out the best in horses and pushed his fellow competitors to do their best. Drawing similarities to the Patrick Valenzuela case, Hubbard suggested that second (or more) chances were a recurring theme in the industry and that Martin deserved such a chance. Hubbard would leg Martin up without any qualms, and looked forward to the opportunity to do so. Trainer Paul Jones, perennially one of the nation's leading Quarter Horse trainers, echoed that sentiment and recounted his long history with Martin. He added that the jockey colony at Los Alamitos needs the veteran leadership that Martin would provide. Jim Helzer, a Director with the American Quarter Horse Association since 1991, attested to his 30+ years of knowledge of Martin and his work. He stated that he would personally vouch that Martin had acknowledged his behavior, had addressed it and corrected it, and that there was virtually no chance of a repeat. Terry Thompson, a California owner and longtime racing fan, recognized Martin as an icon in the industry and wished to use his services as soon as he could. Hall of fame jockey and former trainer Danny Cardoza indicated his support for Martin based on personal knowledge and competition for over 30 years. Dennis Ekins, a trainer at Los Alamitos for over 30 years, and in Texas and New Mexico for 20, indicated that the current jockey colony at Los Alamitos would benefit from the experience and competitiveness Martin would bring. Los Alamitos Starter John Baker added that the industry needs assets like Martin. Finally, although he was not present, Ed Allred, the Los Alamitos track owner and major Quarter Horse owner submitted a letter that stated in part, "His recent record indicates that he is dealing successfully with his problem....We are looking forward to having him join the jockey colony at Los Alamitos...." Upon receipt of the testimonial and documentary evidence, and concluding the discussion, the record was closed and the matter deemed submitted.

BACKGROUND

Jacky Martin applied for re-licensure as a jockey on August 17, 2010. His license application disclosed a criminal conviction. Documents showed that in Texas in January 2006, he had "Unlawfully Taken a Wildlife Resource, namely a White Tail Buck Deer" and had been in "Possession of a Controlled Substance to wit Methamphetamine, less than a gram." He served no time, as his 20-month sentence was suspended within the terms of a four-year supervised probation, from August 8, 2006 through August 7, 2010. CHR B investigations staff appropriately issued a Notice of Refusal of License in accordance with CHR B Rules and Directive 01-09. The investigations file summary stated: "On 8/13/10 jockey Martin applied for a jockeys license with CHR B. Jockey Martin had been arrested for drugs in Kountze, Texas." The disposition/comments stated: "Jockey Martin was convicted for possession of drugs, he is on formal probation, license denied."

Martin applied for and received a jockey license in New Mexico effective July 6, 2010. He submitted his application package for that license as part of this fitness hearing. The package includes Texas Department of Public Safety and Department of Community Supervision and Corrections documents which showed that Martin had completed a required 240-hour community service, a drug offender education class, had satisfied all restitution requirements for court costs and penalties, and had been formally discharged from community supervision effective September 27, 2010. The aforementioned Notice of Refusal of License notified Martin of his right to appeal the refusal and request a fitness hearing. The hearing held October 27, 2010 was for the purpose of that appeal and assessment of his fitness for licensure.

FACTUAL FINDINGS

During a review of materials submitted and subsequent testimony of applicant Martin, CHRB Investigator Lady, and various witnesses as noted below, and in the absence of evidence to the contrary, the following are taken as accepted findings of fact.

I.

Applicant Jacky Davy Martin presented a completed CHRB-59 "Approval Card" and CHRB-4 "Application for License" to the CHRB licensing office at Los Alamitos on August 17, 2010. The Approval Card was signed off by Steward Albert Christiansen and indicated that applicant Martin had demonstrated his ability to perform the duties of a jockey and should therefore be licensed. The Application for License was not processed, as it included the admission that the applicant had been convicted. Senior Investigator Tom Blake prepared the CHRB-83 "Notice of Refusal of License" with the reasons for refusal checked off as "You have been convicted of a crime punishable by imprisonment..." and "You have unlawfully engaged in or have been convicted of possession...of a narcotic...."

II.

Documents from the New Mexico Racing Commission, dated July 6, 2010 and dates prior indicate that Martin had been convicted of the offense of Unlawful Taking a Wildlife Resource, and Possession of a Controlled Substance, and required that Mr. Martin must "...satisfy the Commission of sufficient rehabilitation at a hearing, before the Commission will grant the privileges of licensure." The documents characterized the charges as the poaching of a deer and the possession of methamphetamine – less than one gram. The "Decision and Order" stated that "...the Commission voted unanimously to approve Mr. Martin's application in New Mexico. It is therefore ordered that Mr. Martin is hereby granted a Jockey licensure by the New Mexico Racing Commission..."

III.

Martin returned to the races in New Mexico at Ruidoso Downs in July 2010. He has ridden regularly and successfully, winning seven of twenty trial heats for the All American Futurity, winning several stakes races and ending the season as leading rider.

IV.

CHRB Supervising Special Investigator Lady entered into evidence the entire package of documents relevant to Martin and his application as evidence. This included a completed application form, the New Mexico application and hearing package, and the applicable CHRB Investigative documents, Notice of Refusal of License, Notices of Hearing, Board of Stewards Ruling, and Martin's written request for a licensure.

V.

Martin assumed responsibility for his behavior, and admitted his failings, while speaking to the positive steps he has taken with his life. 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. His record as a licensee is

clean. His references from attendees R. D. Hubbard, who is the former owner of Hollywood Park and current Ruidoso Downs owner, Jim Helzer, member of the AQHA executive committee, Paul Jones, leading quarterhorse trainer, Hall-of-Fame Jockey Danny Cardoza, and others were consistent and unanimous - he would be an asset to the Los Alamitos jockey colony and the horsemen wanted him to ride their stock. Los Alamitos owner Dr. Ed Allred sent a letter commending Martin successful attention to his problems and Allred's personal recommendation that Martin be licensed.

VI.

Martin stated that he would accept any test agreement set as a condition for licensure at his own expense. Further, he had been licensed in New Mexico, but had not applied for licensure in any other jurisdiction.

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.

CHRB 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.

DETERMINATION OF ISSUES

Martin's offenses met the 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. He has no other criminal history or license infractions. The CHRB Investigative staff pointed out that under the terms of Directive 01-09, he would not be eligible for licensure until 2015.

At issue for purposes of this fitness hearing and the record as entered on October 27, 2010, is whether or not it would be appropriate to waive the terms of Directive 1-09 as regards Martin'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. Its intent was to ensure that individuals with recent criminal history and current or recent probation periods would not be licensable without a thorough vetting from executive management. The five-year term included in the Directive makes no sense in this case. Martin's drug-related felonious behavior was partly of the nature that has frequently been given second (or more) chances and did not occur on or near to and was not in any way related to the racing enclosure. The poaching of a deer seems unrelated to or in any way connected to behavior in or around the race track. His completion of community service and drug education, along with his willingness to accept any conditions or testing for licensure indicates his responsibility and intent. Given his overall record in racing, he seems unlikely to endanger the public or horse racing participants in any way.

CONCLUSION/PROPOSED DECISION

The evidence presented at the fitness hearing and made part of the record is sufficient to reach a conclusion in this case. Mr. Martin has a clean license history and appears to be little to no risk to the horse racing industry and racing enclosure. In fact, he would likely be considered a "feel good" story of personal accountability and determination. 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. In this case, that decision is clear.

It is therefore recommended that Jacky Martin be allowed to apply to be licensed as a Jockey in accordance with CHRB Rules # 1481 et seq., and the application for licensure should be considered immediately.

November 1, 2010

DATE
November 1, 2010
Sacramento, California



RICHARD BON SMITH
Hearing Officer
California Horse Racing Board