

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:

Fitness for Licensure

LANCE HELLUM

CHRB License #204385

Groom Applicant

Case No. SAC 11-0004

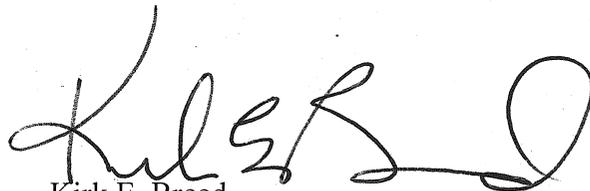
DECISION

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 April 29, 2011.

IT IS SO ORDERED ON April 28, 2011.

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

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PROPOSED DECISION

This matter was heard on February 23, 2011 by C. Scott Chaney, a Hearing Officer designated under California Horse Racing Board rule 1414 (Appointment of Referee) at Santa Anita Park Race Track in Arcadia, CA.

The Appellant, Lance Hellum (hereinafter “Appellant” or “Mr. Hellum”), was represented by attorney Steve Schwartz.

The California Horse Racing Board (hereinafter “CHRB”) was represented by CHRB Supervising Special Investigator Bill Westermann.

Also present at the hearing was trainer Henry Moreno, who appeared as a witness on Appellant’s behalf. The proceedings were recorded by court reporter Barbara Weinstein.

PROCEDURAL BACKGROUND

On January 8, 2011, Appellant applied for a CHRB license in the license category of groom. On the license application, he truthfully answered “yes” to the following questions: (1) “[h]ave you ever been convicted of an offense by a court? and (2) “[h]as [sic] any of your license(s) to participate in racing EVER been revoked or suspended for more than 10 days?” Curiously, the day before (January 7, 2011), CHRB Supervising Special Investigator Westermann (hereinafter “Mr. Westermann”) issued and signed two documents pertaining to Mr. Hellum’s license application—one entitled “Investigations File” and one entitled “Notice of Refusal of License.” The second document served to notify Mr. Hellum that the CHRB refused his license application based on the fact he had been convicted of “a crime punishable by imprisonment in the State or Federal prison, or ha[d] been convicted of a crime involving moral turpitude.” This refusal is not discretionary pursuant to CHRB Directive 01-09 which establishes a CHRB Investigator’s authority in approving licenses for individuals with criminal histories.

Although the documents seem to indicate that Mr. Hellum had been refused a license before he applied and there was no testimony on the issue, it seems reasonable to assume that either there was a mistake or that Mr. Hellum inquired as to whether he would be refused and simply completed the application in order to formalize the process. Regardless of the explanation, this irregularity is not germane to the fitness for licensure issue contemplated here. Mr. Hellum then appealed the denial and requested a formal fitness for licensure hearing. Both parties were noticed and the hearing was scheduled for February 23, 2011. On that day, the hearing was called to order at approximately 10:00 a.m. in accordance with the notice supplied to all parties. The CHRB submitted documentary evidence relevant to the matter, while Appellant presented oral testimony in the form of witnesses, which included himself, as well as documentary evidence. The record was closed and the matter deemed submitted that same day.

LIST OF EXHIBITS

CHRB Exhibit #1 – CHRB document entitled “Lance Hellum Hearing” which included Notice of Hearing & Refusal/Denial of License form, Mr. Hellum’s license application, Request for an appeal, printout of CHRB history, ARCI (Association of Racing Commissioners International) record history and CHRB Board decisions SAC 00-006 and SAC 01-039.

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

Appellant Exhibit A – Certificate of Achievement (Residential Drug Abuse Program – Federal Correctional Complex, Camp North, Lompoc, CA).

Appellant Exhibit B – Transition Ceremony program (Residential Drug Abuse Program).

Appellant Exhibit C – Certificate of Leadership (Big Brother Program).

Appellant Exhibit D – Certificate of Completion (Parenting 1 course).

Appellant Exhibit E – Certificate of Completion (Job Search training).

Appellant Exhibit F – Certificate of Participation (Mock Job Fair).

FACTUAL FINDINGS

I

On or about April 24, 2006, Mr. Hellum was convicted of a felony – Possession with Intent to Distribute More Than 500 grams of Cocaine.

II

Mr. Hellum served approximately five years in federal prison for the conviction and was released in January 2011. He is currently on parole until January of 2013, or approximately two years.

III

In prison, Appellant successfully completed a 500 hour Residential Drug Abuse Program in addition to taking classes in parenting, mentoring, job searching and interviewing skills.

IV

Mr. Hellum was last drug tested on January 22, 2011, at which time he tested negative for illegal drugs.

V

On January 8, 2011, Mr. Hellum applied for a groom's license from the CHRB.

VI

On or about that same date, in accordance with the CHRB Rules and Regulations and pursuant to a CHRB Directive on these matters, Mr. Hellum was refused a license due to his felony conviction and current parole.

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. Hellum's parole. As an initial matter, the CHRB investigative staff appropriately applied the conditions set forth in Directive 01-09 and denied Mr. Hellum's initial license application based on his current felony conviction and parole. 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 of this hearing.

Clearly the CHRB has an interest in withholding licenses from certain individuals in order to regulate the industry in a way that promotes fairness, integrity and safety. For example, individuals who do not possess the requisite skills are precluded from procuring trainer licenses; 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 individuals with minor traffic infractions. The gray area of criminal convictions between these two extremes is more difficult, but is guided by the conditions set forth in the Directive. Applied strictly in this case, Mr. Hellum would be precluded from applying for a license until January of 2018 (five years after the term of his parole is set to expire). It is the purpose of this hearing to determine if the evidence indicates that a waiver of all or part of the time that Mr. Hellum is precluded from applying for a CHRB license is appropriate.

A review of the Appellant's history and the evidence presented at hearing seems relevant here. Evidence seemed to indicate that Mr. Hellum has held a CHRB license since approximately 1973. In the last thirty years, he has been licensed in the categories of stable employee, groom, authorized agent, jockey agent, trainer, assistant trainer, and owner. In the stable area, he has worked for such notable trainers as Noble Threewitt, Eddie Gregson, Henry Moreno, and Richard Mandella, among others. Appellant's breadth and depth of experience is significant. What is also significant, however, is the length and amount of problems with the CHRB, evidenced by the CHRB license history printouts of the various licenses that Appellant has held. This hearing officer has never seen a license history this extensive—while this is partly due to the fact that Mr. Hellum has held CHRB licenses for a significant length of time, it is also due to the fact that there appear to be quite a few rulings and problems associated with these licenses. Even a cursory examination of the license history indicates that Appellant has been fined or

suspended for such violations as: failure to have sufficient worker's compensation insurance, being intoxicated in a restricted area, various arrest warrants (including some related to drugs), being in a restricted area without proper license, and the issuance of checks with non-sufficient funds on several occasions. Included in the CHRB's documentary evidence are two decisions resulting from fitness for license hearings (held after one of several suspensions) in which both triers of fact recommended that Mr. Hellum not be re-licensed. This extensive history comes to an end in 2005 because shortly thereafter, Mr. Hellum was arrested and convicted on felony drug charges and has been incarcerated since that time. Appellant was candid in admitting that most of his past transgressions are related to drug use and the document entitled "Bureau of Prisons Transitional Drug Abuse Treatment Referral" is particularly enlightening in this area (*see CHRB Exhibit #1*). Suffice it to say that Mr. Hellum participated in several drug treatment programs before he went to prison, the efficacy of which is equivocal at best. The hope, obviously, is that five years in prison and extensive drug treatment programs as well as other educational opportunities have finally been successful and will allow Appellant to live a trouble free life, at least as far as the authorities are concerned. At hearing, Mr. Hellum presented trainer Henry Moreno as a character witness. Mr. Moreno's record and esteem in the horse racing industry are impeccable. He has held a trainer's license for 61 years and his medication record and strict aversion to drugs and medication, both horse and human, is laudable. Mr. Moreno has been somewhat of a mentor to Appellant and knew him before his prison stint as well as now. In fact, he monitored his progress in prison through communication and sent him money during his incarceration. He has spent nearly every day with Appellant since his release and believes he is a "changed man." He has offered him a groom's position if Mr. Hellum were allowed a CHRB license.

In his closing, Appellant's attorney argued that Mr. Hellum is a good candidate for a license waiver in that there has been an appropriate evidentiary showing of rehabilitation. He asserted that Appellant has acknowledged his past problems, that he has paid his debt to society and that he is a good candidate for licensure because of his extensive experience in the industry. However, such a licensure would not be undertaken without some risk. At hearing, there was some equivocal evidence about the enthusiasm with which racetrack management would welcome Mr. Hellum's return. While this evidence was both hearsay and ambiguous (and therefore not considered here), an open question is how Appellant's previous baggage would be received if granted a second chance. The CHRB did not advocate a position with respect to Appellant's licensure, but instead relied on the documentary evidence outlined above.

Ultimately, these types of cases are risk/benefit analyses with respect to whether this is the type of individual that the CHRB should license given their criminal past and potential future. On the one hand, Appellant's history is both extensive and serious; on the other hand, Appellant's future may be changing. On balance, the evidence suggests that this may be the type of individual for which CHRB Directive 01-09 should be waived, giving Mr. Hellum a second (or third, or fourth, depending on one's perspective) chance at a career in racing. While the drug felony is troubling, for this industry it seems less so than a bookmaking felony or an animal cruelty conviction. This, coupled with the fact that Appellant has completed extensive drug treatment programs and is currently free of drugs, tips the balance in his favor.

CONCLUSION/PROPOSED DECISION

Given all of the foregoing, it is recommended that Lance Hellum be permitted to apply to be licensed by the CHRB in the license category of groom 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. Hellum's parole, and his enrollment with the Winners' Foundation. It is further recommended that Mr. Hellum be required to submit to a drug test before obtaining said license and that he be required to sign a drug testing agreement with the CHRB and remain on that contract for however long he holds a CHRB license. It is further recommended that Mr. Hellum, for two years, only be permitted to hold a groom's license and that any stewards' rulings against Mr. Hellum be grounds for automatic revocation of his CHRB license.

DATED: March 25, 2011.



C. SCOTT CHANEY
Hearing Officer