

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:

**Appeal of the Board of Stewards Official
Ruling #45, Pacific Racing Association,
dated December 16, 2011**

Case No. SAC 12-0047
OAH No. 2012070351

PERRY L. MARTIN
CHRB License #295083
Appellant

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 November 19, 2012.

IT IS SO ORDERED ON November 15, 2012.

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 the:

Appeal from Board of Stewards
Ruling #45, Pacific Racing Association,
Dated March 11, 2012,

PERRY L. MARTIN,

Appellant.

Case No. 11GG227

OAH No. 2012070351

PROPOSED DECISION

Administrative Law Judge Perry O. Johnson, State of California, Office of Administrative Hearings heard his matter on September 4, 2012, in Oakland, California.

Appellant Perry L. Martin participated in the proceeding by way of a telephone situated in Yuba City, County of Sutter, California.

Mr. Monty Meier and Ms. Donna Perrone, on behalf of their own interests, appeared at the site of the administrative adjudication proceeding in Oakland.

Deputy Attorney General Mary S. Cain-Simon attended the proceeding as an observer on behalf of the Horse Racing Board.

The case was submitted for decision on September 4, 2012.

BACKGROUND

On December 14, 2011, the Board of Stewards (the stewards) of the California Horse Racing Board (the board) conducted a hearing in response to a complaint filed by trainer Mr. Monty Meier against owner Perry L. Martin (appellant).

The matter before the stewards was captioned Trainer Monte Ray Meier versus Owner Perry Lee Martin. Mr. Meier's complaint alleged that Mr. Martin owed Mr. Meier \$660 for training and transportation costs. The debt is associated with the 25 percent ownership by Mr. Martin in a thoroughbred horse named Red Sea."

On March 11, 2012, the stewards issued Ruling No. 45, providing in pertinent part:

Owner Perry L. Martin is hereby ordered to pay trainer Monty R. Meier the sum of Six Hundred and Sixty Dollars (\$660) on or before December 26, 2011, for services rendered. Failure to make the payment will result in suspension of Mr. Perry's license's privileges for violation of California Horse Racing Board rule [number] 1878 (Financial Responsibility) pending payment to Mr. Meier.

FACTUAL FINDINGS BY THE STEWARDS

An appeal was timely filed by appellant from the stewards' ruling. The stewards issued a "STATEMENT OF DECISION," dated March 11, 2012.

The facts that underscore the stewards' decision as established in the record before the stewards are as follows:

1. On August 31, 2011, Monty Meier Racing Stables, owned by Mr. Monty Meier and Ms. Donna Perrone, dispatched to appellant a bill¹ for \$660 for training, shoeing and transporting a horse called Red Sea. The bill was marked "due and payable upon receipt."

¹ The bill reflected a charge on August 11, 2011 for a sum of \$2,015 as a training fee, \$125 for "shoeing" and a fee for "Pony to Post" on August 5, and August 21 of \$50. With regard to appellant's share, the total of the fees was calculated at a 25 percent owners' percentage attributable to appellant for a bill to appellant of \$547. The second item on the bill, dated August 31, 2011, which reflected a date of August 11, 2011, pertained to roundtrip transportation of the horse to and from Santa Rosa with the total bill of \$150 directed to appellant in an amount of \$37.50 due to his 25 percent ownership interest in Red Sea. And the final item on the bill, dated August 31, 2001, showed an entry on August 11, 2011, for roundtrip transportation to and from Ferndale, which showed the total bill of \$150, but the amount billed to appellant was in an amount of \$37.50 due to his 25 percent ownership interest in the horse Red Sea.

2. Appellant was owner of record of 25 percent of the horse Red Sea through the month of August 2001.

3. Ownership interests in the horse Red Sea changed between February 2010 and September 2011.

In February 2010, Red Sea was owned by a partnership consisting of Harris Farms (John Harris) at 50 percent, Steven Coburn at 25 percent and appellant at 25 percent.

In April 2011 John Harris sold his 50 percent interest to Steven Coburn, who then held a 75 percent interest in the horse.

On September 8, 2011, transfer from Steven Coburn to Ms. Donna Perrono of a 25 percent interest in the horse Red Sea was finalized through a record of the sale with the board. Negotiations for the sale between Steven Coburn and Ms. Perrono began in August 2011.

Also on September 8, 2011, appellant's sale of his 25 percent interest in the horse Red Sea was finalized with Steven Coburn and recorded on that date.

On November 5, 2011, Steven Coburn sold his remaining interest in the horse Red Sea to Ms. Perrone, who became the horse's sole owner.

4. Some time during August 2011 appellant and Mr. Meier did negotiate the prospect of appellant selling to Mr. Meier his interest in the horse Red Sea. After an offer and counter-offer between Mr. Meier and appellant, no contract for the sale of appellant's interest in the horse Red Sea was ever formulated between Mr. Meier and appellant.

5. At the stewards' hearing regarding this controversy, the stewards received and weighed in evidence an affidavit, dated December 1, 2011, by Steven Coburn. The affidavit set forth, among other things, that the only consideration given by the horse's majority owner to appellant for appellant's 25 percent interest in Red Sea was a check in the amount of \$800.

6. Appellant failed to prove by competent evidence before the stewards that Coburn had agreed to relieve appellant of the obligation to pay Mr. Meier the portion of the August 2011 bill owed by appellant for the horse's training and transportation in the sum of \$660.

7. Also, appellant failed to prove by competent evidence before the stewards that the division for the correct ownership of the horse Red Sea was not accurately shown in a program when the horse ran a race in August 2011.

APPELLANT'S CONTENTIONS

At the administrative adjudication proceeding before the Office of Administrative Hearings, appellant advanced three over-arching contentions in support of his argument that the stewards' decision was deficient. Appellant contends that: (i) the general rules of procedure for hearings conducted by the stewards require the personal appearance of witnesses. And because there is, according to appellant, no provision for the use of written affidavits or declarations by any person not present at the hearing before the stewards, the affidavit signed by Steven Coburn should not have been used as evidence in the decision-making process by the stewards; (ii) the stewards should not have considered documentary evidence, such as a Bill of Sale as prepared by a clerk, for making its decision; and, (iii) the hearing before the stewards was not the correct forum to determine issues of contract law, but rather the dispute between Mr. Monty Meier and appellant should be a matter considered by the California Superior Court.

STANDARD OF REVIEW

Under California Horse Racing Rule 1761, every decision of the stewards, except a decision concerning disqualification of a horse, may be appealed to the board. Under Business and Professions Code section 19517, 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. On appeal the burden is on the appellant to prove the facts necessary to sustain the appeal. (California Horse Racing Rule 1764.)

REVIEW OF ARGUMENTS AND EVIDENCE AT THE ADMINISTRATIVE ADJUDICATION BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS

1. Appellant's contentions are erroneous.

Proceedings before the stewards come within the scope of administrative adjudication. In administrative adjudication, the strict rules of evidence are not operative. Boards, commissions and other executive branch entities may make determinations in adjudicative settings based on sworn statements by witness who are not present at the proceeding to undergo cross-examination when such out-of-court statements, which are deemed reliable and trustworthy, are used to supplement and explain other admissible evidence. (see Gov. Code, § 11513, subd. (d).). Also, documents that are reasonably authenticated for the board's use in resolving the

controversy may be used to resolve the controversy. Lastly, the board has promulgated rules based upon statutorily granted authority to assure that board licensees do not “willfully and deliberately fail or refuse to pay any moneys when due for any service . . . directly related to [a licensee’s] horse racing operations” (Calif Code of Regs., title 4, § 1876.) In this matter, the stewards faithfully carried out the authority delegated by the board as granted by statute.

2. This matter has as its underpinning appellant’s contractual obligation to pay Mr. Monty Meier for that trainer’s provision of services in August 2011 for the training, shoeing and transportation of the horse Red Sea.

Appellant’s theory is that his obligation to pay Mr. Meier was absolved when in September 2011 he sold his 25 percent interest in the horse to the majority owner, Steven Coburn.

Appellant’s assertions allude to the existence of “novation” of a contract between appellant, Steven Coburn and Mr. Meier. The supposed novation affected the owners’ obligation to pay a proportionate share of the bill tendered by Mr. Meier for the transportation and training of the horse Red Sea in a manner as to absolve appellant of his portion of the debt because Steven Coburn agreed to pay appellant’s portion of the debt.

Novation is the substitution of a new obligation for an existing one. (Civ. Code, §1530.) Paragraph 2 of section 1531 of Civil Code provides that novation may be made “by the substitution of a new debtor in place of the old one, with intent to release the latter.” Novation, however, is made by contract, and it is subject to all the rules concerning contracts in general. (Civ. Code, §1532) Mr. Meier wholly disagreed at the hearing before the stewards that he had knowledge that Mr. Coburn promised to relieve appellant of the obligation that appellant had in August 2011 to pay his part of the debt owed to Mr. Meier for the training and transportation bill for which appellant’s part is in an amount of \$660. The affidavit by Steven Coburn denied that when he purchased from appellant the 25 interest in the horse Red Sea as previously owned by appellant that Steven Coburn had promised to relieve appellant of the debt to pay Mr. Meier for training and transportation fees. And of great importance is the lack of any written agreement between Steven Coburn and appellant regarding the majority owner assuming appellant’s part of the debt owed to Mr. Meier. Hence, there was no novation of the contract between appellant and Mr. Meier regarding the \$660 debt that may be deemed to constitute a substitution of a new obligation by Steven Coburn that extinguished the existing contract obligation of appellant to pay the debt owed to Mr. Meier.

3. The stewards carefully considered the above facts, including mitigating circumstances.

4. Appellant did not establish that the stewards mistakenly interpreted the law, nor did he produce any new evidence of a convincing nature that was not considered by the stewards.

5. Finally, the preponderance of the evidence does not indicate that the best interests of racing and the state may be better served by absolving appellant of his contractual debt to Mr. Meier. The board has clearly articulated a public policy interest of protecting the integrity of horse racing by assuring that “[n]o licensee shall . . . fail or refuse to pay any moneys when due for . . . service . . . related to . . . California horse racing operations, not shall [a licensee] falsely deny any amount due . . . with the purpose of hindering or delaying or defrauding the person to whom such indebtedness is due.” (Calif. Horse Racing Board, Rule 1876.)

6. Appellant had a lawful contractual obligation to pay Mr. Meier for services rendered during August 2011 for the training, shoeing and transportation of the horse Red Sea, during a time in which appellant was recorded as an owner of a 25 percent interest in the horse. On or about September 30, 2011, appellant breached his contract to pay the lawful debt that he owed to Mr. Meier.

7. The stewards were correct in making the ruling that required appellant to pay Mr. Meier the sum of \$660.

LEGAL CONCLUSIONS

1. The stewards issued an appropriate order pursuant to California Horse Racing Board Rule 1876.

2. Cause does not exist under Business and Professions Code section 19517 for the board to overrule the decision by the stewards in this matter.

ORDER

1. The Board of Stewards' Ruling No. 45, dated March 11, 2012, against owner Perry L. Martin is affirmed.

2. Within 15 days of the effective date of this decision, appellant is to pay Mr. Meier, his spouse, assignee or heir, \$660.

DATED: October 3, 2012

A handwritten signature in black ink, appearing to read "Perry O. Johnson", is written over a horizontal line. The signature is stylized and somewhat cursive.

PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings