

**BEFORE THE HORSE RACING BOARD**

**STATE OF CALIFORNIA**

In the Matter of the Appeal from the Board  
of Stewards Official Ruling #021, Santa  
Anita Autumn Meet, dated October 15, 2017

Case No. SAC 17-0055

**COREY NAKATANI**  
**CHRB License #112150**  
**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 August 27, 2018.

IT IS SO ORDERED ON August 23, 2018.

CALIFORNIA HORSE RACING BOARD  
Chuck Winner, Chairman



Rick Baedeker  
Executive Director

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8 **BEFORE THE CALIFORNIA HORSE RACING BOARD**

9 **STATE OF CALIFORNIA**

10 **In the Matter of:**

Case No.: SAC 17-0055

11 **Appeal of the Board of Stewards Order**  
12 **Official Ruling #021, Santa Anita Autumn**  
13 **Meet, Dated October 15, 2017**

**PROPOSED DECISION RE: APPEAL**  
**OF THE BOARD OF STEWARDS'**  
**OFFICIAL RULING NO. 21, SANTA**  
**ANITA AUTUMN MEET, DATED**  
**OCTOBER 15, 2017**

13 **COREY NAKATANI**  
14 **CHRB License No. 112150**  
**Appellant**

15 **I. INTRODUCTION**

16 This matter arises from an appeal of the Board of Stewards' Official Ruling No. 21, Santa  
17 Anita Autumn Meet, dated October 15, 2017 (the "Ruling").

18 Appellant, Corey Nakatani ("Appellant") personally appeared and was represented by  
19 Darrel Vienna, Esq. The California Horse Racing Board ("Respondent" or the "CHRB") was  
20 present and represented by Supervising Attorney Michelle Logan-Stern, Esq.

21 Pursuant to California Horse Racing Board Rule 1414, Hearing Officer Patrick J. Kane  
22 ("Officer") presided over this Appeal.

23 This Appeal came for hearing on May 8, 2018 at 10:10 a.m. at Santa Anita Park located  
24 in Arcadia, California 91007 (the "Hearing"). Michelle Derieg recorded all testimony presented  
25 during the Hearing.

26 This matter's evidentiary record closed at the conclusion of the proceedings on May 10,  
27 2018 at approximately 4:40 p.m.

28 **II. EXHIBITS ADMITTED INTO EVIDENCE**

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**A. Exhibits the CHRB Entered into Evidence.**

The CHRB entered the following exhibits into evidence:

- Exhibit "1" C.H.R.B. OFFICIAL RULING OF THE BOARD OF STEWARDS SANTA ANITA AUTUMN MEET, OCTOBER 15, 2017;
- Exhibit "2" C.H.R.B. OFFICIAL RULING OF THE BOARD OF STEWARDS HOLLYWOOD PARK RACING ASSOCIATION, DECEMBER 21, 2008;
- Exhibit "4" CALIFORNIA HORSE RACING BOARD, REPORT OF INVESTIGATION, FILE NUMBER 17SA0226 DATED OCTOBER 28, 2017;
- Exhibit "5" HEALTH AND RACING SOUNDNESS RECORD, "HARD ARCH";
- Exhibit "6" C.H.R.B. RULE 1692;
- Exhibit "7" C.H.R.B. RULE 1510;
- Exhibit "8" CHART RE: "HARD ARCH";
- Exhibit "9" SPECS ON 5TH RACE, SANTA ANITA PARK, SATURDAY, OCTOBER 14, 2017;
- Exhibit "11" REPORT OF THE BOARD OF STEWARDS, LOS ANGELES TURF CLUB, SANTA ANITA PARK, WEEK 3, FRIDAY, OCTOBER 13, 2017 THROUGH SUNDAY, OCTOBER 15, 2017; and
- Exhibit "12" DVD, 5TH RACE.

**B. Exhibits Appellant Entered into Evidence.**

Appellant entered the following exhibits into evidence:

- Exhibit "1" REPORT BY JOHN P. ARAUJO, D.V.M.;
- Exhibit "2" STATEMENT OF KURT D. HOFFMAN, D.V.M. AND MELISSA D. ORR, D.V.M.;

1 Exhibit "3" STATEMENT OF KURT D. HOFFMAN, D.V.M. AND  
2 MELISSA D. ORR. D.V.M.; and  
3 Exhibit "4" STATEMENT OF JOHN P. ARAUJO, D.V.M.

4 **III. LIST OF TESTIFYING WITNESSES**

5 **A. Witnesses Testifying on Behalf of Appellant.**

6 Appellant called the following the witnesses:

- 7 • The Honorable Grant Baker;
- 8 • Vladimir Cerin;
- 9 • Donald James Shields, Jr.;
- 10 • Kent Desormeaux;
- 11 • Mike Smith;
- 12 • Dana Stead; and
- 13 • Corey Nakatani.

14 **B. Witnesses Testifying on Behalf of the CHRB.**

15 The CHRB called the following witnesses:

- 16 • The Honorable Kim Sawyer; and
- 17 • The Honorable Luis Jauregui.

18 **IV. FACTUAL FINDINGS**

19 After analyzing and admitting all exhibits into evidence, admitting testimony provided  
20 during the Hearing, this Officer makes the following findings of fact:

21 **A. The Conduct at Issue.**

22 **I.**

23 On October 14, 2017, Appellant rode the number eight (8) horse, Hard Arch ("Hard Arch"  
24 or the "Horse"), to a fifth-place finish in the fifth race at Santa Anita (the "Subject Race"). (CHRB  
25 Ex. 9.) The Subject Race was a \$20,000.00 maiden claiming race run at one mile and one  
26 sixteenth. (Id.) The Subject Race was a "superfecta race" meaning bettors could wager on who  
27 they thought would run first, second, third, and fourth. (Id.)

28 **II.**



1 **VI.**

2 On the morning of October 15, 2017, Stead examined Hard Arch (“Post-Race  
3 Examination”) and determined that:

4 (1) Hard Arch’s front ankles had a decreased range of motion with some joint  
5 effusion present; (2) the Horse had a thickening to his high suspensory and capsular  
6 joints; (3) the Horse’s fetlocks had some joint effusion; and (4) the Horse was  
“slightly hockey” with a “slightly exaggerated gait.” (H.T. at p. 88-91.)

7 After completing the Post-Race Examination, Stead concluded Hard Arch was sound  
8 enough to race even though the Horse had some “joint effusion.” (H.T. at p. 26, 111-112.) Stead  
9 found that Hard Arch exhibited some signs of a limited range of motion, but this limited range of  
10 motion was consistent with Hard Arch’s previous examinations. (Id. at p. 122.)

11 **VII.**

12 Also, on October 15, 2017, and prior to meeting with Appellant, Steward Kim Sawyer  
13 (“Steward Sawyer”) spoke with Cerin concerning Hard Arch’s post-race condition. (H.T. at p.  
14 225.) Cerin explained that: (1) he was going to give Hard Arch a break from racing; (2) he injected  
15 Hard Arch’s stifles before the Subject Race; and (3) he stood behind Appellant’s decision to ease  
16 Hard Arch before the Subject Race’s conclusion. (Id. at p. 40, 41, 55, 225-226.)

17 **VIII.**

18 Later on October 15, 2017, Appellant appeared before the Stewards to review his ride on  
19 Hard Arch and why Appellant failed to ride the to the finish line. (H.T. at p. 190.) While meeting  
20 with the Stewards, Appellant stated he did not ride Hard Arch to the finish line due to the Horse  
21 feeling “unsound.” (Id. a p. 191.) Specifically, Appellant explained he “eased up” on Hard Arch  
22 believing the Horse “was off in his right front.” (Id. at p. 225.)

23 However, after viewing a replay of the Subject Race, the Stewards determined that: (1)  
24 Appellant’s actions during the Subject Race did not support the assertion that either Hard Arch or  
25 Appellant were in imminent danger; (2) Appellant “coasted in” and was not concerned about Hard  
26 Arch’s soundness; and (3) Appellant’s decision to “ease” Hard Arch before the finish line cost  
27 the Horse a better placing in the Subject Race. (H.T. at p. 247-248, 250.)

28 Thus, the Stewards unanimously issued the Ruling finding that:

1 Jockey COREY NAKATANI, who rode HARD ARCH in the FIFTH race at Santa  
2 Anita Park on October 14, 2017 is suspended for THREE (3) racing days (October  
3 22, 26 and 27, 2017) for violation of California Horse Racing Board rule #1692  
(Requirements for Horse, Trainer and Jockey – failure to ride his mount to the  
finish, costing him a better finish position). (CHRB Ex. 1; H.T. at p. 228.)

4 **C. Hard Arch's History of Soundness Issues and Treatment Thereof.**

5 **IX.**

6 Hard Arch has been plagued by soundness issues throughout his racing career. (H.T. at  
7 p. 38.) Specifically, Hard Arch has “stifles and hocks” while his “rear-end doesn’t function as  
8 well as it should’ve.” (Id.) Cerin previously injected Hard Arch with “Dex and Cortizone” hoping  
9 to remedy the Horse’s soundness issues. (Id.)

10 Cerin separately performed “a lot of work” in preparing Hard Arch for the Subject Race  
11 hoping to have remedied Hard Arch’s physical issues. (H.T. at p. 42.) Unfortunately, Hard  
12 Arch’s performance on the racetrack continued to worsen. (Id. at p. 45.)

13 At no time during his racing career has Hard Arch been placed on the “Veterinarian’s  
14 List” for any reason relating to being injured and/or unsound. (CHRB Ex. 4.)

15 **X.**

16 Between July 27, 2017 and September 23, 2017, Hard Arch received at least ten injections  
17 and related medications including:

18 (1) [1]injections of “Betamethasone” on the Horse’s stifles on August 25, 2017; (2)  
19 Legend IV injections on September 22, 2017; (3) Acetyl-D-Glucosamine injections  
20 July 27, 2017, August 3, 10, 17, 24, and 31, 2017, September 8, 13, and 21 2017;  
21 (3) injections into the Horse’s hocks on October 8, 2017; (4) Robaxin on September  
13, 2017; and (5) Firocoxib on September 20, 2017. (CHRB Ex. 4; Appellant’s  
“App.”) Exs. 2,3; H.T. 232-235.)

22 **XI.**

23 On October 14, 2017, the CHRB’s Official Veterinarian, Dr. Tim Grande (“Grande”),  
24 conducted a pre-race examination of Hard Arch. (H.T. at p. 95-96; CHRB Exs. 4, 5.) Grande’s  
25 pre-race examination revealed that Hard Arch: (1) “paddled with both front legs”; (2) was “hikey  
26 behind”; (3) had “decreased joint range of motion”; (4) had “thickened knees and front suspensory  
27 ligaments; and (5) “osselets in both ankles.” (H.T. at p. 96; CHRB Ex. 5.)

28 However, Hard Arch was sound and cleared to run in the Subject Race. (CHRB Ex. 4.)

1 **D. Hard Arch's Post Race Condition and Subsequent Layoff.**

2 **XII.**

3 Hard Arch returned to Cerin's barn at Santa Anita immediately after running in the Subject  
4 Race and was inspected by Cerin's stable employees who found Hard Arch to be "choppy" and  
5 "short striding behind" (Id. at p. 52-53.)

6 Additionally, Hard Arch received Phenylbutazone ("Bute") immediately after running in  
7 the Subject Race as Cerin administers post-race Bute to all of his horses as a "matter of practice"  
8 to ensure his horses "feel relatively well overnight" and "don't have pain from the experience" of  
9 racing. (H.T. at p. 39, 51.)

10 **XIII.**

11 On or about October 18, 2017, Cerin sent Hard Arch to his "home" for rehabilitation as  
12 Hard Arch was still sore from the Subject Race. (H.T. at p. 39; Ex. 4.) Hard Arch "rehabbed" at  
13 Cerin's home for over three months and did not race for over six months. (Id. at p. 39-40.)

14 **D. The CHRB Continues Investigating after the Ruling.**

15 **XIV.**

16 Subsequent to issuing the Ruling, the CHRB continued to investigate Appellant's claims  
17 in defense of his Conduct during the Subject Race. (CHRB Ex. 4.) Specifically, on October 20,  
18 2017, CHRB investigator James Hamilton interviewed Cerin concerning Hard Arch and  
19 Appellant's Conduct during the Subject Race. (Id.) Specifically, Cerin stated that:

20 (1) "[H]e stood behind [Appellant] in his decision [to ease up on Hard Arch] in this  
21 instance completely"; (2) if Appellant felt something was wrong with Hard Arch  
22 during the Subject Race then he "can't argue with [Appellant] about [the  
23 Conduct]"; and (3) while watching the Subject Race, Cerin noticed Hard Arch  
drifting out and that the Horse's head was "pointing up indicating there was  
possibly something wrong with [Hard Arch's] rear." (H.T. at p. 54, 41-42; CHRB  
Ex. 4.)

24 **XV.**

25 On October 22, 2017, CHRB investigator James Hamilton spoke with jockey Israel  
26 Ocampo ("Ocampo") about whether he talked to Appellant after the Subject Race. Ocampo stated  
27 he spoke with Appellant about the Subject Race and Appellant stated that "he pulled Hard Arch  
28

1 up because [the Horse] was sore.” (CHRB Ex. 4.) Ocampo separately watched a replay of the  
2 Subject Race and thought Hard Arch “looked sore” during the Subject Race. (Id.)

3 **E. The Appeal’s Procedural Background.**

4 **XVI.**

5 On or about October 16, 2017, Appellant timely filed a “Notice of Appeal” with the CHRB  
6 and simultaneously sought a stay of the Ruling’s three-day suspension. On or about October 16,  
7 2017, the CHRB granted Appellant’s request for a stay.

8 **XVII.**

9 On or about April 10, 2018, the CHRB set this Appeal for hearing on May 8, 2018 at Santa  
10 Anita Park.

11 **V. ISSUES ON APPEAL AND CONTROLLING LAW**

12 The issue before this Officer is whether Appellant has met the required burden of proof  
13 needed to overrule the Stewards’ unanimous Ruling that Appellant, without any excuse or  
14 mitigating circumstances, failed to ride Hard Arch out until the Horse passed the finish line  
15 costing Hard Arch a better placing in violation of Cal. Code Regs. Tit. 4 § 1692 (“Section 1692”).

16 Section 1692 states in pertinent part that “[j]ockeys going to the post in any race shall race  
17 their mount to win, shall give their best efforts in the race to their mount and the public, and shall  
18 ride their mount out until the finish line is passed.” (Cal. Code Regs. Tit. 4 § 1692.)

19 Moreover, Business and Professions Code Section 19517(a) provides the overall  
20 framework of the Appeal, and states, in relevant part, that:

21 The board, upon due consideration, may overrule any steward’s decision...if a  
22 preponderance of the evidence indicates any of the following: (1) The steward  
23 mistakenly interpreted the law; (2) new evidence of a convincing nature is  
produced; or (3) the best interests of racing and the state may be better served.

24 Appellant has the burden of proving facts necessary to sustain the appeal. (See, Cal. Code  
25 Regs. Tit. 4 § 1764 [“The burden shall be on the appellant to prove the facts necessary to sustain  
26 the appeal.”].)

27 “Preponderance of the evidence means evidence that has more convincing force than that  
28 opposed to it.” (*Glage v. Hawes Firearms Co.* (1990) 226 Cal. App. 3d 314, 324.)

1 “Preponderance of the evidence means what it says, viz., that the evidence on one side outweighs,  
2 preponderates over, is more than, the evidence on the other side, *not necessarily in number of*  
3 *witnesses or quantity*, but in its effect on those to whom it is addressed.” (Id. at 325 [citations  
4 omitted].)

5 Because this Appeal concerns whether “new evidence of a convincing nature has  
6 produced,” this Officer applies the preponderance of the evidence standard of review.

## 7 VI. DISCUSSION

### 8 A. New Evidence of a Convincing Nature Requires a Reversal of the Ruling.

9 The Stewards unanimously determined Appellant violated Section 1692 and there were  
10 no mitigating circumstances justifying Appellant’s Conduct because: (1) Appellant did not  
11 dismount Hard Arch after “easing” him to the Subject Race’s finish line; (2) Stead’s Post Race  
12 Examination of Hard Arch found the Horse “to be sound enough to run.” (H.T. at p. 26, 201.)

13 However, Appellant produced new evidence of convincing nature that he reasonably  
14 believed Hard Arch to be sore and/or unsound during the final stages of the Subject Race thereby  
15 justifying his supposed violation of Section 1692. Thus, and as discussed below, the Stewards’  
16 Ruling should be reversed.

17 First, Appellant provided evidence of Hard Arch’s medical history, which was unavailable  
18 at the time of the Stewards’ Ruling. Specifically, Hard Arch’s medical history demonstrates the  
19 Horse suffered from soundness issues that necessitated the Horse receive at least ten injections  
20 between July 27, 2017 and September 23, 2017. (CHRB Ex. 4; App. Exs. 2, 3; H.T. at p. 232-  
21 235). And, the CHRB’s “Investigative Report,” also unavailable to the Stewards, demonstrates  
22 Hard Arch received injections in his hocks on October 6, 2017, a mere six days before the Subject  
23 Race. (CHRB Ex. 4.)

24 This “new evidence” is of a convincing nature in that it justifies Appellant’s Conduct and  
25 belief that Hard Arch was sore and/or unsound during the final stages of the Subject Race. In  
26 fact, Stewards Grant Baker (“Steward Baker”) and Louis Jauregui (“Steward Jauregui”) both  
27 admitted had they known that Hard Arch received at least ten joint supplement injections, it would  
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1 have impacted their decision to suspend Appellant for supposedly violating Section 1692. (H.T.  
2 at p. 31-32, 261.)

3 For this reason alone, the Stewards' Ruling should be reversed.

4 Appellant presented additional evidence that Hard Arch did not run in another race for  
5 over six months after running in the Subject Race. (H.T. at p. 39-40; CHRB Ex. 4.) Specifically,  
6 Cerin testified that on October 18, 2017, he sent Hard Arch to his "home" for rehabilitation as  
7 Hard Arch was "sore and there was no point in preserving with him." (Id.) Cerin kept Hard Arch  
8 at his home for over three months for rehabilitation before the Horse returned to Santa Anita  
9 where he did not run in a race until May 24, 2018. (Id.)

10 Again, Steward Jauregui testified that had he known that Cerin intended to "turn [Hard-  
11 Arch] out for three weeks, but kept [Hard Arch] out for ninety days," it would have affected his  
12 decision that Appellant violated Section 1692. (H.T. at p. 261.) However, this evidence was not  
13 available to the Stewards at the time they issued the Ruling. (H.T. at p. 260-261.)

14 And, Cerin further testified that he stood behind Appellant and his Conduct during the  
15 Subject Race. (H.T. at p. 53.) Specifically, Cerin stated Appellant acted properly in "easing"  
16 Hard Arch because the Horse drifted out in the final stages of the Subject Race while "getting his  
17 head up in the air" usually indicating that a horse is not comfortable. (Id. at p. 41.)

18 The fact Cerin supports Appellant and believes he acted properly cannot go unnoticed.  
19 Indeed, Appellant's Conduct caused Cerin and Hard Arch's owners to lose \$675.00, the difference  
20 between finishing fourth and fifth in the Subject Race. (CHRB Ex. 9.) Despite this, Cerin  
21 unequivocally supports Appellant's Conduct especially in light of the fact that Hard Arch was  
22 sent away for rehabilitation immediately after the Subject Race. (H.T. at p. 39-40, 53; CHRB Ex.  
23 4.)

24 Thus, Cerin's testimony, via a preponderance of the evidence, separately supports a  
25 reversal of the Steward's Ruling.

26 Concerning Stead's Post-Race Examination and conclusion that Hard Arch was sound  
27 enough to race, Appellant presented new evidence that Hard Arch was under the influence of Bute  
28 during said examination. (H.T. at p. 39, 51.) Stead was unaware Hard Arch received Bute and

1 acknowledged that Bute can “confound veterinary examinations and mask injuries.” (H.T. at p.  
2 98-100.)

3 Moreover, Appellant presented expert testimony from Dr. James Shields, Jr. (“Shields”)  
4 who testified that: (1) the administration of Bute within twenty-four hours of an examination  
5 could “interfere with said examination with regards to soundness”; and (2) numerous medical  
6 studies show that Bute “can potentially mask or cover [up] existing injuries.” (H.T. at p. 59.) In  
7 fact, Shields stated he would not examine any horse under the influence of Bute because he would  
8 “want to see all the conditions available rather than something masked by non-steroidals [Bute].”  
9 (Id. at p. 60.)

10 Accordingly, the new evidence Appellant presented demonstrates, by a preponderance of  
11 the evidence, that Stead’s Post-Race Examination of Hard Arch could have been confounded due  
12 to Hard Arch being under the influence of Bute.

13 Because new evidence demonstrates that: (1) Hard Arch suffered from chronic soundness  
14 issues that required numerous medical treatment protocols; (2) Hard Arch did not run again after  
15 the Subject Race until May 24, 2018; and (3) Stead was unaware that Hard Arch was under the  
16 influence of Bute at the time he conducted his Post-Race Examination, the Stewards’ Ruling  
17 should be reversed.

18 It should be noted that this Hearing Officer finds no fault with the Stewards’ Ruling.  
19 Indeed, this Hearing Officer believes the Stewards correctly considered the evidence presented  
20 and reached the correct conclusion at the time they issued the Ruling. However, Appellant  
21 presented evidence of a convincing nature that this Officer believes requires a reversal of the  
22 Ruling.

23 Because this Hearing Officer finds that Appellant provided new evidence of a convincing  
24 nature requiring the Ruling be reversed, Appellant’s due process argument is moot and is not  
25 addressed in this Proposed Decision.

26 Finally, while his testimony is irrelevant to any finding made in this Proposed Decision,  
27 Appellant’s witness Kent Desormeaux (“Desormeaux”) is cautioned about his behavior during  
28 the Hearing. Specifically, during the brief time he was present during the Hearing, Desormeaux’s

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behavior was combative, offensive, and wholly inappropriate in addressing the counsel for the CHRB, this Hearing Officer, and other individuals present at the Hearing. And, this Officer finds that Desormeaux's testimony lacked credibility and bordered on perjury.

Thus, Desormeaux is cautioned that similar behavior in future hearings, whether as a party or a witness, will not be tolerated going forward.

Accordingly, Appellant, via a preponderance of the evidence, produced new evidence of a convincing nature requiring the Stewards' Ruling be overturned.

**VII. CONCLUSION**

Because the Appellant presented new evidence of a convincing nature supporting a reversal of the Stewards' Ruling, Appellant met his burden of proof necessary to grant his Appeal, and thus Appellant's Appeal should be granted.

WHEREFORE, it hereby recommended that Appellant's Appeal of SAC 17-0055 be granted, and that the Steward's Ruling be reversed in accordance with this Proposed Decision.

Dated: August 3, 2018



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