

BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of:

FITNESS FOR LICENSURE

MICHAEL SEPULVEDA
Appellant

Case No. SAC 18-0043

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 February 22, 2019.

IT IS SO ORDERED ON February 21, 2019.

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**

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| 10 In the Matter of: |) | Case No.: SAC 18-0043 |
| 11 FITNESS FOR LICENSURE |) | PROPOSED DECISION RE: MICHAEL |
| 12 MICHAEL SEPULVEDA |) | |
| 13 Previous CHRB License No. 318171 |) | LICENSURE |
| 14 Appellant. |) | Hearing Date: November 28, 2018 Time: 11:00 a.m. |

15 **I. INTRODUCTION**

16 This matter came for hearing on November 28, 2018 at 11:00 a.m. at the Del Mar
17 Thoroughbred Club in Del Mar, California 92014 (the "Appeal"). Appellant Michael Sepulveda
18 ("Appellant") was present and represented himself. The California Horse Racing Board
19 ("CHRB") was present and represented by Robert Brodник, Esq.

20 Pursuant to California Horse Racing Board Rule 1414, Hearing Officer, Patrick J. Kane
21 ("Officer"), presided over this matter. Michelle Derieg recorded all testimony presented during
22 the instant proceeding.

23 This matter's record closed at the conclusion of the proceedings on November 28, 2018
24 at approximately 11:27 a.m.

25 **II. EXHIBITS ADMITTED INTO EVIDENCE**

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

27 The CHRB entered the following exhibits into evidence:

28 Exhibit "1" OFFICIAL RULING FROM THE BOARD OF STEWARDS,

1 DATED MARCH 10, 2018;
2 Exhibit "2" LETTER FROM THE WINNERS FOUNDATION SIGNED BY
3 DARIN SCHARER, DATED JUNE 1, 2018;
4 Exhibit "3" NOTICE OF REFUSAL LICENSE;
5 Exhibit "4" FITNESS FOR HEARING REQUEST BY MR. SEPULVEDA;
6 AND
7 Exhibit "5" NOTICE OF HEARING, DATED NOVEMBER 7, 2018.

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

9 Appellant did not enter any exhibits into evidence.

10 **III. LIST OF TESTIFYING WITNESSES**

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

12 Appellant did not call any witnesses.

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

14 The CHRB called the following the witnesses:

- 15 • Darin Scharer; and
- 16 • Michael Sepulveda.

17 **IV. FACTUAL FINDINGS**

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

20 **A. Appellant's License is Suspended.**

21 **I.**

22 Trainer Keith Desormeaux ("Desormeaux") previously employed Appellant as a "hot
23 walker." (See, Ex. 4.) In or around March 2018, Appellant was involved in some sort of
24 altercation with his fellow employees at the Desormeaux barn where Appellant threatened said
25 employees by stating "[he] felt like getting a gun and blowing [the employees'] [fu..king] brains
26 out...just leave me alone (hereinafter, the "Conduct")." (Hearing Transcript ("H.T.") at p. 25.)

27 **II.**

28 On March 10, 2018, the Board of Stewards ("Stewards") unanimously issued Official

1 Ruling No. 096 suspending Appellant for his Conduct (the “Ruling”). (Ex. 1.) The Ruling made
2 the following findings:

3 Groom Michael Sepulveda is suspended for the term of his license which expires
4 on May 31, 2018 pursuant to California Horse Racing Board rules #1489 (Grounds
5 for Denial or Refusal of License) and #1900 (Grounds for Suspension or
6 Revocation) for violation of California Horse Racing Board rule #1874 (Disorderly
7 Conduct – threatening to kill a co-worker). It is further ordered that Mr. Sepulveda
8 participate in a fitness for license hearing before being relicensed. During the term
of suspension, all licenses and license privileges of Michael Sepulveda are
suspended and pursuant to California Horse Racing Board rule #1528 (Jurisdiction
of Stewards to Suspend and Fine), Michael Sepulveda is denied access to all
premises in this jurisdiction. (Ex. 1.)

9 **B. The CHRFB Denies Appellant’s 2018 Licensure Application.**

10 **III.**

11 On or about June 1, 2018, Appellant presented an Application for License (“Application”)
12 to the CHRFB. (Ex. 3.) On June 1, 2018, CHRFB Investigator Hamilton issued a CHRFB Form 83
13 “Notice of Refusal of License” refusing the Application because Appellant must participate in a
14 fitness hearing before being relicensed per the Ruling (the “Refusal”). (Ex. 3.)

15 **C. Procedural History.**

16 **IV.**

17 On July 12, 2018, and in accordance with the Ruling and the Refusal, Appellant requested
18 a fitness hearing “for the purpose of reinstat[ing] [Appellant’s] license for [his] position as a hot
19 walker.” (Ex. 4.) On November 7, 2018, the CHRFB set this Appeal for hearing on November 28,
20 2018 at the Del Mar Thoroughbred Club (the “Hearing”). (Ex. 5.)

21 **D. Appellant’s Participation with the Winner’s Foundation and Related Treatment.**

22 **V.**

23 In or around March 2018, Appellant met with a Winner’s Foundation representative to
24 discuss his anger management. (H.T. at p. 11.) The representative recommended that Appellant
25 enroll in an anger management program. (Id.) Appellant proceeded to enroll in a thirteen-week
26 (13) anger management program facilitated by the Winner’s Foundation (the “Program”). (Id. at
27 11-12, Ex. 2.) During the Program, Appellant: (1) met with a Winner’s Foundation representative
28 on a weekly basis; (2) completed weekly “homework assignments” that provided Appellant with

1 the necessary tools to assist with controlling his anger; and (3) discussed how to use these anger
2 management skills in Appellant's personal life. (H.T. at p. 12.) Indeed, Appellant attended more
3 than the required number of sessions to continue working on his anger issues. (Id. at p. 13.)

4 Thus, on June 1, 2018, the Winner's Foundation issued correspondence stating that: (1)
5 Appellant had successfully completed the program; and (2) Appellant understood the seriousness
6 of his actions; and (3) Appellant possessed the tools necessary to assist in managing his anger
7 going forward. (Ex. 2.)

8 VI.

9 In addition to participating in the Program, Appellant separately sought treatment with a
10 therapist. (H.T. at p. 28.) Appellant sees a therapist once a month and intends to continue
11 attending monthly treatments going forward. (Id. at 28-29.) Appellant also intends to begin
12 attending group therapy sessions with family member to discuss their respective childhood issues.
13 (Id. at 28.)

14 V. ISSUES ON APPEAL AND CONTROLLING LAW

15 The issue before this Officer is whether Appellant shows he is fit for licensure and whether
16 Appellant demonstrates "rehabilitation" in light of Appellant's previous rule violations.

17 When considering the denial of a license on the grounds that the applicant committed an
18 act or has been convicted of a crime and the applicant's rehabilitation and eligibility for licensure,
19 the following should be considered:

20 (1) The nature and severity of the act(s) and/or offense(s), including its relation to
21 horse racing or pari-mutuel wagering and the protection of the public; (2) the total
22 criminal record, including evidence of any act(s) and/or offense(s) committed
23 subsequent to the act(s) or offense(s) under consideration as grounds for denial,
24 suspension or revocation which also could be considered grounds for denial,
25 suspension, or revocation under Business and Professions Code sections 480 or
26 490; (3) the time that has elapsed since commission of the act(s) or offense(s); (4)
the extent to which the person seeking licensure or the licensee has complied with
any terms of parole, probation, restitution or any other sanctions lawfully imposed
against the person or licensee; (5) the credibility of the person seeking licensure or
the licensee, and his or her acceptance of responsibility and remorse for the
conduct; and (6) evidence, if any, of rehabilitation submitted by the person seeking
licensure or by the licensee. (Cal. Code Regs. Tit. 4 § 1489.2.)

27 Appellant must demonstrate, by a preponderance of the evidence, that he meets the
28 necessary licensure requirements. (See, Cal. Code Regs. Tit. 4 § 1764 ["The burden shall be on

1 the appellant to prove the facts necessary to sustain the appeal.”], Cal. Evid. Code § 115, *Hughes*
2 *v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 784, *Owen v. Sands* (2009) 176
3 Cal.App.4th 985, 989.)

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

6 “Preponderance of the evidence means what it says, viz., that the evidence on one side outweighs,
7 preponderates over, is more than, the evidence on the other side, *not necessarily in number of*
8 *witnesses or quantity*, but in its effect on those to whom it is addressed.” (*Glage v. Hawes*
9 *Firearms Co.* (1990) 226 Cal. App. 3d 314, 325 [citations omitted].)

10 Because this Appeal concerns the denial of a license due to previous “bad acts,” Appellant
11 must provide sufficient evidence of rehabilitation and overall fitness for licensure.

12 VI. DISCUSSION

13 Based upon the evidence presented, and as discussed below, Appellant has met the
14 rehabilitation criteria set forth in Cal. Code Regs. Tit. 4 § 1489.2 (“Section 1489.2”), and thus
15 made the necessary showing of “rehabilitation” to permit the CHRB to license Appellant as a hot
16 walker in the State of California.

17 As discussed above, Section 1489.2 provides the following criteria relevant in evaluating
18 Appellant’s rehabilitation and fitness for licensure:

- 19 (1) The nature and severity of the act(s) and/or offense(s), including its relation to
20 horse racing or pari-mutuel wagering and the protection of the public; (2) the total
21 criminal record, including evidence of any act(s) and/or offense(s) committed
22 subsequent to the act(s) or offense(s) under consideration as grounds for denial...;
23 (3) the time that has elapsed since commission of the act(s) or offense(s); (4) the
24 extent to which the person seeking licensure or the licensee has complied with any
25 terms of parole, probation, restitution or any other sanctions lawfully imposed
26 against the person or licensee; (5) the credibility of the person seeking licensure or
27 the licensee, and his or her acceptance of responsibility and remorse for the
28 conduct; and (6) evidence, if any, of rehabilitation submitted by the person seeking
licensure or by the licensee.

25 Concerning Section 1489.2’s nature and severity element, this Officer believes the
26 Conduct was a sporadic outburst where Appellant simply lost control of his emotions. While
27 Appellant’s Conduct was severe and led to the Stewards to correctly issues the Ruling, the
28 Conduct is unrelated to horse racing, pari-mutual wagering, or the general public. Accordingly,

1 Section 1489.2's severity prong supports a finding of rehabilitation.

2 As to Section 1489.2's acceptance and remorse prong, Appellant demonstrates remorse
3 and accepts responsibility for his Conduct. Indeed, a Winner's Foundation representative testified
4 that: (1) Appellant "had some epiphanies and internal changes" while participating in the
5 Program; (2) Appellant recognized his Conduct was "absolutely wrong" and came to accept
6 responsibility for the Conduct. (H.T. at p. 14-16.)

7 And, Appellant: (1) separately expressed remorse and regret for his Conduct; (2)
8 understands how wrong his Conduct was and vowed it would not happen again; and (3) stated
9 that he would apologize to the individuals he threatened (H.T. at p. 23, 25-26, 29-30.) This Officer
10 separately recognizes Appellant credibly testified as to his remorse and responsibility for the
11 Conduct.

12 Significantly, there is no evidence of Appellant being involved in "bad acts" subsequent
13 to the Conduct. To the contrary, Appellant improved his life since the Conduct as he: (1) found
14 permanent housing and is no longer living in his car; and (2) will likely be coaching the Glendora
15 Tennis Team in the near future. (H.T. at p. 16, 30.)

16 Finally, Appellant submitted sufficient rehabilitation evidence. Specifically, Appellant
17 introduced evidence that he: (1) enrolled in and completed a thirteen week anger management
18 course; (2) currently is working with a therapist concerning his anger management issues as well
19 as other related issues and will continue seeing a therapist going forward; (3) intends to separately
20 attend group therapy sessions with family members to discuss childhood issues; (4) now has the
21 tools to better control his anger; and (5) has taken steps to ensure that the Conduct does not happen
22 again. (H.T. at p. 26-29.)

23 Accordingly, for all the above reasons, this Officer finds Appellant met the criteria set
24 forth in Section 1489.2 and should be relicensed as a hot walker in the State of California.

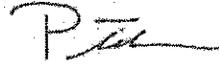
25 VII. CONCLUSION

26 Because Appellant met the rehabilitation criteria set forth in Section 1489.2, and because
27 Appellant made the necessary showing of "rehabilitation" since the Conduct, Appellant's request
28 to be licensed as a hot walker in the State of California is granted.

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WHEREFORE, it hereby recommended that Appellant's Appeal be granted.

Dated: February 8, 2019



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