

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

**In the Matter of:**

Appeal of the Statement of Decision of the Board of Stewards at Del Mar Thoroughbred Club, regarding the protest of the Second Race at Santa Anita on June 18, 2021.

Case No.: SAC 21-0094

**JOSEPH HERRICK**  
**CHRB License #244384**  
**DEANNA THOMSEN**  
**CHRB License #402635**

**DECISION**

The attached Proposed Decision is adopted by the California Horse Racing Board as its Decision in the above-entitled matter, with the decision being to uphold the August 20, 2021 “Statement of Decision of the Board of Stewards”.

IT IS SO ORDERED ON March 18, 2022.



CALIFORNIA HORSE RACING BOARD  
Gregory L. Ferraro, DVM, Chairman

*C. Scott Chaney*

Scott Chaney  
Executive Director

1 David S. Pawlowski, SBN 169909  
7777 Fay Ave., Suite 315  
2 La Jolla, CA 92037  
Phone (858) 454-0024  
3 Fax (858) 454-1250  
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6 **BEFORE THE CALIFORNIA HORSE RACING BOARD**

7 **STATE OF CALIFORNIA**

8 **In the Matter of:**

**CASE NO.: SAC21-0094**

9 **Appeal of the Statement of Decision of**  
10 **the Board of Stewards at Del Mar**  
11 **Thoroughbred Club, Regarding the**  
12 **Protest of the Second Race at Santa**  
13 **Anita on June 18, 2021**

**PROPOSED DECISION RE: APPEAL**  
**OF THE DECISION OF THE BOARD**  
**OF STEWARDS AT DEL MAR**  
**THOROUGHbred CLUB,**  
**REGARDING THE PROTEST OF THE**  
**SECOND RACE AT SANTA ANITA ON**  
**JUNE 18, 2021**

14 **JOSEPH HERRICK, C.H.R.B.**  
15 **LICENSE NO. 244384**

16 **DEANNA THOMSEN, C.H.R.B.**  
17 **LICENSE NO. 402635**

18 **APPELLANTS.**

Hearing Date: November 18, 2021  
Time: 10:00 a.m.

19 **I.**

20 **INTRODUCTION**

21 This matter arises from an Appeal of the August 20, 2021 Statement of Decision of the  
22 Board of Stewards at the Del Mar Thoroughbred Club Regarding the Protest of the Second Race  
23 at Santa Anita on June 18, 2021 (the "Appeal").

24 This Appeal came on for hearing on November 18, 2021 at 9:03 a.m. via video conference.  
25 Mikyla Lux recorded all testimony presented during the instant proceedings. Pursuant to  
26 California Horse Racing Board Rule 1414, Hearing Officer David S. Pawlowski ("Officer")  
27 presided over the Appeal.

28 Appellants Joseph Herrick ("Appellant Herrick") and Deanna Thomsen ("Appellant  
Thomsen") were present without counsel. The California Horse Racing Board ("Respondent"  
or the "CHRB") was present and represented by attorney Robert Brodnik.

1 The Appeal's evidentiary record closed at the conclusion of the proceedings on November  
2 18, 2021 at 10:03 a.m.

3 **II.**

4 **EXHIBITS ENTERED INTO EVIDENCE**

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

6 The CHRB entered the following exhibits into evidence:

7 Exhibit "1" Statement of Decision of the Board of Stewards at Del Mar  
8 Thoroughbred Club, Regarding the Protest of the Second Race at  
9 Santa Anita on June 18, 2021.

10 **B. Exhibits Entered into Evidence by Appellants.**

11 None.

12 **III.**

13 **LIST OF TESTIFYING WITNESSES**

14  
15 **A. Witnesses Testifying on Behalf of Appellant Thomsen**

- 16 • Ron Thomsen

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

- 18 • Kim Sawyer  
19 • Darrel Mchargue

20 **IV.**

21 **FACTUAL FINDINGS**

22 After admitting all exhibits and testimony into evidence, this Officer makes the following  
23 findings of fact:

24 **I.**

25 On June 18, 2021, #5 Summer Rose ("Summer Rose" or the "Horse") won the second  
26 race at Santa Anita Park. The race was contested at 1 1/16 miles on the main track (CHRB  
27 Exhibit 1.)  
28

1 **II.**

2 According to the Equibase chart of the race in question Summer Rose broke super to  
3 quickly taken (sic) control vied with Mamas Got Cash early, inched ahead at the nine-sixteenth,  
4 dwelt into the far turn cleared nearing the quarter Pole, inched away in upper stretch and lasted  
5 at the wire (CHRB Exhibit 1.)

6 **III.**

7 Appellant Thomsen is licensed by the California Horse Racing Board as an Owner.  
8 Appellant Herrick is licensed in the category of Owner and Trainer (CHRB Exhibit 1.)

9 **IV.**

10 Appellant Thomsen filed a formal letter of protest in accordance with CHRB Rule #1754  
11 (Protests). The protest letter states that the formal protest/complaint was against the Santa Anita  
12 racing stewards for allowing a horse, who prematurely broke through the starting gate, an unfair  
13 advantage (CHRB Exhibit 1.)

14 **V.**

15 On June 21, 2021, Appellant Herrick filed a protest on the results of race #2, ran on  
16 February 18, 2021 claiming Summer Rose broke through the gate early and had an unfair  
17 advantage on the rest of the field. Appellant Herrick claimed Summer Rose should have been  
18 declared a non-starter (CHRB Exhibit 1.)

19 **VI.**

20 On August 4, 2021, Stewards Grant Baker, Luis Jauregui and Kim Sawyer denied the  
21 protest and concluded “to disturb the results of the second race on June 21, 2021, would be  
22 unreasonable to this Board of Stewards” and thus the result of the second race on June 18, 2021,  
23 at Santa Anita Park should remain as is (CHRB Exhibit 1.) The Board of Stewards specifically  
24 concluded as follows:

25 An unfair advantage was not proven to this Board of Stewards. At  
26 one point in the hearing when referring to Exhibit 3, picture #2,  
27 Mr. Herrick stated Do we have a magnifying glass when  
28 questioned about the latches on the starting gate. CHRB Rule  
#1759 (Horse to Be Disqualified on Valid Protest) gives the Board  
of Stewards great freedom of choice on how to decide how these  
protests are judged. To this Board of Stewards there is no reason

1 to disqualify SUMMER ROSE. As stated in part of Equibase  
2 Charts (Exhibit 3) SUMMER ROSE broke super. To disturb the  
3 results of the second race on June 21, 2021, would be  
4 unreasonable to this Board of Stewards. (CHRB Exhibit 1.)

5 **VII.**

6 On September 21, 2021, Appellant Thomsen sent written notice of her appeal of the  
7 decision and on August 4, 2021, Appellant Herrick sent written notice of his appeal the stewards  
8 decision from (CHRB Exhibit 1.)

9 **V.**

10 **ISSUES ON APPEAL AND CONTROLLING LAW**

11 The issue before this Officer is whether Appellants have met their required burden of  
12 proof needed to overrule the Stewards' unanimous Ruling rejecting Appellants protest that  
13 Summer Rose prematurely broke through the starting gate thereby gaining an unfair advantage  
14 on the rest of the field and should have been declared a non-starter or a starter for purse money  
15 only and disregarded for pari-mutuel purposes pursuant to Cal. Code Regs. Tit. 4 § 1696  
16 ("Section 1696").

17 Section 1696 states in pertinent part:

18 (a) Except in cases of emergency, every horse shall be started from  
19 an approved starting gate by the starter.

20 (b) If, in the opinion of the stewards, a horse did not receive a fair  
21 start through no fault of the horse, or gained an unfair advantage  
22 at the start, such horse may be declared a non-starter or may be  
23 declared a starter for purse money only and disregarded for pari-  
24 mutuel purposes.

25 Also at issue in this Appeal is Cal. Code Regs. Tit. 4 § 1759 which states:

26 If a protest against a horse which has won or which has placed in  
27 any race is declared valid, that horse may be disqualified and the  
28 other horses in the race are entitled to places in that order in which  
they finished. A horse so disqualified is a starter in the said race  
and may be placed last in the order of finish, or behind a horse  
interfered with.

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1           Moreover, Business and Professions Code Section 19517(a) states, in relevant  
2 part, that:

3           The board, upon due consideration, may overrule any steward's  
4 decision...if a preponderance of the evidence indicates any of the  
5 following:

- 6           (1) the stewards mistakenly interpreted the law;
- 7           (2) new evidence of a convincing nature is produced;
- 8           (3) the best interests of racing and the state may be better served.

9           Appellants have the burden of proving facts necessary to sustain this Appeal. (See, Cal.  
10 Code Regs. Tit. 4 § 1764 ["The burden shall be on the appellant to prove the facts necessary to  
11 sustain the appeal."] In reviewing an administrative decision "that substantially impacts a  
12 fundamental vested right, [this Officer shall]...exercise [his] independent judgment upon the  
13 evidence." (*Alberda v. Board of retirement of Fresno County Employers' Retirement Assn. (2013) 214*  
14 *Cal.App.4th 426, 433, citations omitted.*) "In carrying out this independent review, [this Officer]  
15 must afford the agency's decision a strong presumption of correctness and must impose upon  
16 [Appellant] the burden of showing that the agency's findings are contrary to the weight of the  
17 evidence, i.e., the decision was not supported by the preponderance of the evidence." (*Alberda,*  
18 *supra, 214 Cal.App.4th at 433, citations omitted.*) "Preponderance of the evidence means what it says,  
19 viz., that the evidence on one side outweighs, preponderates over, is more than, the evidence on  
20 the other side, not necessarily in number of witnesses or quantity, but in its effect on those to  
21 whom it is addressed." (*Glage v. Hawes Firearms Co. (1990) 226 Cal.App.3d 314, 325, citations*  
22 *omitted.*) "[W]hile [this Officer] begins [his] review with a presumption of the correctness of the  
23 [agency's decision], the presumption is rebuttable and may be overcome by the evidence."  
24 (*Alberda, supra, 214 Cal.App.4th at 433, citations omitted.*) "When applying the independent judgment  
25 test, [this Officer] may reweigh the evidence and substitute [his] own findings for those of the  
26 [agency], after first giving due respect to the [agency's] findings." (*Breslin v. City and County of San*  
27 *Francisco (2007) 146 Cal.App.4th 1064, 1077.*)

28           The instant Appeal solely concerns whether the evidence presented supports the Stewards'  
Ruling that Summer Rose did not prematurely break through the starting gate thereby gaining an

1 unfair advantage. Appellants must demonstrate that the Ruling is not supported by a  
2 preponderance of the evidence.

3 **VI.**

4 **SUMMARY OF EVIDENCE PRESENTED**

5 In support of their Appeal, Appellants testified on their own behalf as well as separately  
6 called Mr. Ron Thomsen (“Mr. Thomsen”) to testify on their behalf.

7 **A. Summary of Testimony Presented by Appellants.**

8 **1. Mr. Thomsen’s Testimony**

9 Mr. Thomsen testified that it was obvious Summer Rose broke out of the gate early. Mr.  
10 Thomsen further testified the Stewards tried to cover up their mistake as they did not call for an  
11 inquiry.

12 **2. Appellant Deanna Thomsen’s Testimony**

13 Ms. Thomsen relied on the exhibits that were submitted (presumably CHRB Exhibit 1) to  
14 establish Summer Rose had a clear unfair advantage over the rest of the field.

15 **3. Appellant Joseph Herrick’s Testimony**

16 Mr. Herrick also relied on the exhibits that were submitted (presumably CHRB Exhibit 1)  
17 to establish Summer Rose broke early and gate five opened before the other gates.

18 **B. Summary of Testimony Presented by the CHRB.**

19 In support of its position that the Appeal be overruled, the CHRB called the Hon. Kim  
20 Sawyer (“Mrs. Sawyer”) and the Hon. Darrel Mchargue (“Mr. Mchargue”) to testify on its behalf.

21 Concerning Mrs. Sawyer, she provided the following testimony:

- 22 (1) She is employed by the California Horse Racing Board since  
23 2005 as a Steward; (2) a formal hearing was conducted pertaining  
24 to the second race at Santa Anita on June 18, 2021 concerning the  
25 start of race and the horse Summer Rose; (3) during the formal  
26 hearing, Mr. Herrick and Mrs. Thomsen presented photographs,  
27 a video of the race, the Steward’s minutes and argument; (4) the  
28 board unanimously ruled there would be no change to the race  
which was memorialized in a written ruling; (5) after reviewing the  
race in question, Ms. Sawyer determined Summer Rose did not  
violate CHRB Rule 1755 and thus did not gain an unfair  
advantage; (6) CHRB Rule 1696 provides the discretion to change  
the order of finish but the gates opened simultaneously (H.T. 25-  
28, 30-32.)

1 The CHRB separately called Mr. Mchargue who provided the following testimony:

2 (1) he has been the chief Steward for the CHRB for approximately  
3 four years and prior to that was a Steward for thirty years and a  
4 jockey for approximately fifteen years; (2) as chief Steward for the  
5 CHRB, he has handled protests; (3) he has reviewed the statement  
6 of decision in respect to the race at issue herein and the still  
7 photos; (4) after conducting his review, "the Stewards took their  
8 time to review the race prior to the race going official. You see  
9 that in their decision and also the testimony of Ms. Sawyer and  
10 then after the protest and reviewing the evidence presented at the  
11 protest hearing, they are still of the opinion that the correct  
12 decision was made, and I agree with their decision"; (5) that a  
13 protest can be made under Rule 1755 subsection (e) when there is  
14 an unfair advantage gained in violation of the rules; and (6) the  
15 Stewards found no violation of the Rules which would have a  
16 horse gain advantage; and (7) in his opinion, no mistaken  
17 interpretation of the rules with regard to Rule 1755 as analyzed by  
18 the Stewards. (H.T. 39-42.)

## 11 VII.

### 12 DISCUSSION

13 It is clear the Stewards' unanimous Ruling rejecting Appellants protest is supported by a  
14 preponderance of the evidence. Specifically, Appellants failed to meet their required burden of  
15 proof for several reasons.

16 The picture of the starting gate admitted into evidence fails to establish that gate number  
17 5 opened early or that Summer Rose broke through the gate prematurely. To the contrary, based  
18 solely on the picture, it appears the latch on gate 5 was in the lock position consistent with the  
19 other gate latches. Furthermore, the Equibase Footnotes expressly provide Summer Rose broke  
20 super to quickly take control.

21 This Officer separately notes that although his testimony was presented at the hearing,  
22 Starter Jay Slender testified at the Stewards' hearing that Summer Rose "...just got a lucky start"  
23 and after watching replays of the start, Mr. Slender "...hit the button and all the power is killed  
24 and those latches drop and the doors come open at the same time".

25 Accordingly, the Stewards' unanimous Ruling, rejecting Appellants protest that Summer  
26 Rose prematurely broke through the starting gate is supported by a preponderance of the  
27 evidence.  
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VIII.  
CONCLUSION

Because admissible evidence supports the Stewards' Ruling and because the Ruling is supported by a preponderance of the evidence, Appellants failed to meet the burden of proof necessary to sustain the instant Appeal.

WHEREFORE, it is hereby recommended that Appellants Appeal of SAC21-0094 be denied, and the August 20, 2021 Statement of Decision of the Board of Stewards be upheld.

DATED: February 11, 2022



David S. Pawlowski, Esq.  
Hearing Officer