BEFORE THE CALIFORNIA HORSE RACING BOARD

OF THE STATE OF CALIFORNIA

In the Matter of: **Appeal of the Board of Stewards Official Ruling #56, DMTD Del Mar Thoroughbred Meet, dated August 21, 2021** **KENT DESORMEAUX** **CHRB License # 209912** **Appellant**	Case No. SAC-0071

DECISION

The attached Proposed Decision is hereby adopted by the California Horse Racing Board as its Decision in the above-entitled matter.

This Decision is hereby remanded to the Board of Stewards to issue a ruling and order for setting the dates of suspension.

The Decision shall become effective on March 19, 2022.

IT IS SO ORDERED ON March 18, 2022.

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

C. Scott Chaney

Scott Chaney
Executive Director

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BEFORE THE CALIFORNIA HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of: **Appeal of the Board of Stewards' Official Ruling No. 56, Del Mar Thoroughbred Club, Dated August 21, 2021** **KENT DESORMEAUX** **C.H.R.B. LICENSE NO. 209912** **Appellant.**	Case No.: SAC 21-0071 **PROPOSED DECISION RE: APPEAL OF THE BOARD OF STEWARDS' OFFICIAL RULING NO. 56, DEL MAR THOROUGHBRED CLUB, DATED AUGUST 21, 2021** Hearing Date: December 2, 2021 Time: 1:00 p.m.

I. INTRODUCTION

This matter arises from an Appeal of the Board of Stewards' Official Ruling No. 56, Del Mar Thoroughbred Club, Dated August 21, 2021 (the "Appeal").

This Appeal came for hearing on December 2, 2021 at 12:52 p.m. via video conference as well as in person at Los Alamitos Racecourse. Michelle Derieg recorded all testimony presented during the instant proceeding. Pursuant to California Horse Racing Board Rule 1414, Hearing Officer Patrick J. Kane ("Officer") presided over the Appeal.

Appellant Kent Desormeaux ("Appellant") was present and represented by attorney Bing Bush. The California Horse Racing Board ("Respondent" or the "CHRB") (collectively, with Appellant, referred to as the "Parties") was present and represented by attorney Robert Brodnik.

The Appeal's evidentiary record closed at the conclusion of the proceedings on December 2, 2021, at approximately 1:42 p.m.

II. EXHIBITS ADMITTED INTO EVIDENCE

A. Exhibits Entered into Evidence.

The Parties jointly entered the following exhibits into evidence:

Exhibit "1" The Stewards' Ruling, No. 56, and Minutes Dated August 16, 2021 through August 22, 2021; and

Exhibit "2" DVD of the Fifth Race at the Del Mar Thoroughbred Club Run on August 20, 2021.

III. LIST OF TESTIFYING WITNESSES

A. Witnesses Testifying on Behalf of Appellant.

Appellant called the following the witnesses:

- Kent Desormeaux.

B. Witnesses Testifying on Behalf of the CHRB.

The CHRB called the following the witnesses:

- The Hon. Kim Sawyer; and
- The Hon. Grant Baker.

IV. FACTUAL FINDINGS

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

I.

On August 20, 2021, Appellant rode the number three (3) horse, Vantage Point ("Vantage Point" or the "Horse"), to a third-place finish in the fifth race at the Del Mar Thoroughbred Club, a $50,000.00 claiming event run at a distance of one mile on the Jimmy Durante Turf Course (the "Race"). (Exs. 1, 2.)

II.

During the Race's stretch drive, Vantage Point "drifted two paths into the number nine (9) horse, Muay Thai, causing [Muay Thai] to take up sharply to stay off [Vantage Point's] heels (the "Interference")." (Ex. 1 at p. 2.) The Interference separately "affected the number seven (7) horse, Rookie Year, who was on the outside of [Muay Thai], [who] again had to take up."

(Hearing Transcript ("H.T.") at p. 19, 21, 33, Ex. 1 at p. 2-3, Ex. 2.)

As a result, the Board of Stewards (the "Stewards") conducted an inquiry into the Race's stretch run. (Ex. 1 at p. 2-3.) The Stewards unanimously determined that Vantage Point's outward drift caused Muay Thai to "take up sharply," while separately affecting Rookie Year, resulting in a unanimous decision to disqualify Vantage Point from third place to seventh place. (Id.)

III.

On August 21, 2021, Appellant appeared before the Stewards to review film of his ride during the Race. (Ex. 1 at p. 4.) After analyzing the Race's replay and discussing the Interference with Appellant, the Stewards determined that: (1) Appellant's "outward drift involved a shift out two paths and went uncorrected for four strides"; (2) the Interference "made a horse to [Vantage Point's] outside take up sharply to avoid clipping heels [while] also [a]ffecting [the] second horse to [Vantage Point's] outside [as well as] [a]nother horse behind the incident [who] had to check when horses from the incident backed up"; and (3) Appellant's actions "were dangerous and the horse he almost dropped was very lucky to not fall." (Id.)

Accordingly, on July 24, 2021, the Stewards, in a majority opinion, issued Official Ruling No. 56, Del Mar Thoroughbred Club (the "Ruling"), which made the following factual findings:

> Jockey KENT DESORMEAUX, who rode VANTAGE POINT in the fifth race at Del Mar Racetrack on August 20, 2021, is suspended for FIVE (5) racing days (August 28, 29, September 2, 3, and 4, 2021), for failure to maintain a straight course in the stretch and causing interference, which resulted in the disqualification of his mount from third to seventh place. This constitutes a violation of California Horse Racing Board rule #1699 (Riding Rules – careless riding – second offense in sixty (60) days).
>
> Pursuant to California Horse Racing Board Rule #1766 (Designated Races), the term of suspension shall not prohibit participation in designated races. (Ex. 1 at p. 4, 8.)

Steward Luis Jauregui ("Mr. Jauregui") voted for a four-day suspension, as opposed to a five-day suspension, but agreed that Appellant should be suspended for the Interference. (Ex. 1 at p. 4, H.T. at p. 22.)

IV.

Appellant subsequently appealed the Ruling. The CHRB proceeded to set the instant

Appeal for hearing on December 2, 2021 via video conference. (H.T. at p. 5.)

V. ISSUES ON APPEAL AND CONTROLLING LAW

The issue before this Officer is whether Appellant met the burden proof required to overrule the Stewards' Ruling, that Appellant failed "to maintain a straight course in the stretch and causing interference, which resulted in the disqualification of [Vantage Point] from third to seventh place" in violation of Cal. Code Regs. Tit. 4 § 1699 ("Section 1699"). Section 1699 states in pertinent part:

> During the running of the race:
>
> (a) A horse shall not interfere with any other horse. Interference is defined as bumping, impeding, forcing or floating in or out or otherwise causing any other horse to lose stride, ground, momentum or position.
>
> (b) A horse which interferes with another as defined in subsection (a) may be disqualified and placed behind the horse so interfered with if, in the opinion of the Stewards, the horse interfered with was not at fault and due to the interference lost the opportunity for a better placing.
>
> (c) Jockeys shall not ride carelessly, or willfully, so as to permit their mount to interfere with any other horse.
>
> (d) Jockeys shall not strike or strike at another horse or jockey so as to impede, interfere with, intimidate, or injure.
>
> (e) If a jockey rides in a manner contrary to this rule, the mount may be disqualified and the jockey may be suspended or otherwise disciplined by the Stewards.
>
> (f) When suspending a jockey for riding contrary to this rule, the Stewards shall issue a minimum suspension of two riding days, and shall issue a suspension greater than the minimum for (1) more than one infraction of this rule by the jockey within any contiguous 60 day calendar period or (2) any infraction which, in the opinion of the stewards, jeopardized the safety of another horse or jockey.

Appellant has the burden of proving facts necessary to sustain this Appeal. (See, Cal. Code Regs. Tit. 4 § 1764 ["The burden shall be on the appellant to prove the facts necessary to sustain the appeal."].) In reviewing an administrative decision "that substantially impacts a fundamental vested right, [this Officer shall]…exercise [his] independent judgment upon the evidence." (*Alberda v. Board of retirement of Fresno County Employers' Retirement Assn.* (2013) 214 Cal.App.4th 426, 433, citations omitted.)

"In carrying out this independent review, [this Officer] must afford the agency's decision

a strong presumption of correctness and must impose upon [Appellant] the burden of showing that the agency's findings are contrary to the weight of the evidence, i.e., the decision was not supported by the preponderance of the evidence." (*Alberda*, supra, 214 Cal.App.4th at 433, citations omitted.) "Preponderance of the evidence means what it says, *viz.*, that the evidence on one side outweighs, preponderates over, is more than, the evidence on the other side, not necessarily in number of witnesses or quantity, but in its effect on those to whom it is addressed." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325, citations omitted.)

"[W]hile [this Officer] begins [his] review with a presumption of the correctness of the [agency's decision], the presumption is rebuttable and may be overcome by the evidence." (*Alberda*, supra, 214 Cal.App.4th at 433, citations omitted.) "When applying the independent judgment test, [this Officer] may reweigh the evidence and substitute [his] own findings for those of the [agency], after first giving due respect to the [agency's] findings." (*Breslin v. City and County of San Francisco* (2007) 146 Cal.App.4th 1064, 1077.)

Because the instant Appeal solely concerns whether the evidence presented supports the Stewards' Ruling, that Appellant "failed to maintain a straight course causing interference" in violation of Section 1699, Appellant must demonstrate that the Ruling is not supported by a preponderance of the evidence.

VI. SUMMARY OF EVIDENCE PRESENTED

A. Summary of Testimony Presented by Appellant.

In support of demonstrating he did not violate Section 1699, Appellant testified on his own behalf. Appellant is a jockey based in Southern California who has been licensed as a jockey for thirty-six years (36) whose career includes: (1) being inducted into the Hall of Fame in 2004; (2) riding in approximately 40,000.00 races; (3) winning the Kentucky Derby and Preakness three times; and (4) winning several Breeders' Cup races. (H.T. at p. 9.)

Concerning the Interference, Appellant testified he was unaware that Vantage Point had drifted out two to three paths until the Interference had occurred. (H.T. at p. 13.) Upon realizing the Horse had drifted out, Appellant immediately "corrected" Vantage Point. (Id.) However, Appellant concedes he did not know how many paths Vantage Point drifted out before he

corrected Vantage Point's outward drift. (Id. at p. 14.)

B. Summary of Testimony Presented by the CHRB.

In support of its position that Appellant violated Section 1699, the CHRB called the Hon. Kim Sawyer ("Ms. Sawyer"), and the Hon. Grant Baker ("Mr. Baker") to testify on its behalf. Ms. Sawyer and Mr. Baker, along with Mr. Jauregui, were the on-duty stewards during the running of the Race.

Concerning Ms. Sawyer, she provided the following testimony:

> (1) Inside the final 1/16th of the Race, Vantage Point gradually drifts out into the path of Muay Thai causing Muay Thai and Rookie Year to sharply "take up and check"; (2) Appellant made no attempt to prevent the Interference from occurring; (3) Appellant allowed Vantage Point to gradually drift two to three paths, without taking any corrective action; (4) Vantage Point "came out approximately six strides" before the Interference occurred; (4) the Interference was particularly egregious because it could have caused numerous horses to stumble or fall it occurred during the "heel clipping stage" of the Race; and (5) Ms. Sawyer voted for a "stiffer penalty" because the Interference could have resulted in dramatic injury "to [both] horse and rider." (H.T. at p. 18-22.)

Mr. Baker offered the following testimony in support of the Ruling:

> (1) Appellant allowed Vantage Point to drift out a "couple of paths" resulting in the Interference; (2) the Interference could have resulted in horses falling, which is why Mr. Baker voted in favor of a five-day suspension; (3) had Appellant maintained a straight path with Vantage Point, the Interference would likely have not occurred; and (4) Appellant's attempt to correct Vantage Point came too late as the Interference had occurred by the time Appellant took any corrective action. (H.T. at p. 31, 33, 36.)

VII. DISCUSSION

It is clear the Stewards' Ruling, that Appellant violated Section 1699, is supported by a preponderance of the evidence. Specifically, Appellant failed to meet his required burden of proof for several reasons.

Initially, the Race replay, as well as testimony admitted into evidence, supports the Stewards' Ruling that Appellant acted carelessly by failing to "maintain a straight course in the stretch" causing the Interference. (See Ex. 2, H.T. at p. 18-22, 31, 33, 36.) Indeed, the evidentiary record unequivocally demonstrates that:

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/ / /

> (1) Appellant failed to take the necessary action to avoid the Interference despite having sufficient time to do so; (2) Appellant's failure to timely "correct" Vantage Point's gradual outward drift caused the Interference; (3) Appellant did not put forth sufficient effort to correct Vantage Point's outward drift until after the Interference had occurred; (4) Appellant rode carelessly causing the Interference; and (5) Appellant's failure to timely take corrective action put his fellow riders and horses in serious jeopardy. (See Ex. 2, H.T. at p. 18-22, 31, 33, 36.)

In fact, Appellant admits: (1) to not knowing how many paths Vantage Point drifted out; and (2) he did not take any corrective action until after the Interference had occurred. (H.T. at p. 12-14.) The Stewards' Ruling is supported by a preponderance of the evidence for these reasons alone.

Appellant's argument that the Ruling should be overturned because he makes "an effort to be a safe rider" is completely without merit and is irrelevant. The fact that Appellant is generally a "safe rider" makes no difference as indisputable evidence demonstrates Appellant's total disregard for safety in causing the Interference. This Officer separately notes that the Ruling was Appellant's second suspension in a sixty-day period, which calls the veracity of Appellant's "safe rider" argument further into question.

Finally, Appellant's challenge to the Ruling's five-day suspension issued in accordance with Section 1699(f) is overruled as: (1) the Interference clearly "jeopardized the safety of another horse [and] jockey"; and (2) Appellant a had separate infraction within the 60 calendar days of this Ruling. (See Exs. 1-2, H.T. at p. 22, 33.) And, Muay Thai's jockey, the chief victim of the Interference, told the Stewards he "was very concerned for his safety as his mount could have easily gone down." (Ex. 1 at p. 4.) Thus, Appellant's five-day suspension is supported by a preponderance of the evidence.

Accordingly, the Stewards' Ruling, that Appellant failed "maintain a straight course in the stretch and causing interference" in violation of Section 1699, is supported by a preponderance of the evidence and should be upheld.

VIII. CONCLUSION

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

WHEREFORE, it hereby recommended that Appellant's Appeal of SAC 21-0071 be overruled, and that Appellant's five-day suspension for violating Section 1699 be upheld and reinstated for the reasons stated above.

Dated: February 28, 2022

Patrick J. Kane, Esq.
Hearing Officer