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6 **BEFORE THE CALIFORNIA HORSE RACING BOARD**

7 **STATE OF CALIFORNIA**

8 In the Matter of:

Case No. **SAC 25-006**

9 Appeal of the Board of Stewards Official
10 LATS Ruling #43, Santa Anita Park Classic
11 Meet, Dated February 28, 2025

PROPOSED DECISION

Hearing Date:
May 8, 2025, at 12:30 p.m.; Closing Briefs
Submitted May 19, 2025

12 **Antonio Fresu, CHRB License #407256**
13 **Appellant**

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16 **PROPOSED DECISION**

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18 This matter was heard on May 8, 2025, by Edward J. Weiss, Esq., a Hearing Officer
19 designated by the California Horse Racing Board, in person at Santa Anita Park. On May 19,
20 2025, the parties submitted closing briefs, as ordered by the Hearing Officer, at which time the
21 evidentiary record was closed.

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24 Appellant Antonio Fresu (hereinafter “Fresu” or “Appellant”) appeared and was
25 represented by counsel, Darrell J. Vienna, Esq. Also present with Appellant at the hearing was
26 attorney Bing Bush, Esq. Mr. Bush did not actively participate.
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PROPOSED DECISION RE: ANTONIO FRESU APPEAL OF THE RULING OF THE STEWARDS #43 DATED
FEBRUARY 28, 2025

1 The California Horse Racing Board (“CHRB” or “Respondent”) was represented by
2 Staff Counsel Jacquelyn Loyd.

3
4 Mr. Fresu and the CHRB are at times below collectively referred to as the “Parties.”

5
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7 The proceedings were recorded by court reporter Michelle E. Derieg of Weinstein Court
8 Reporters, LLC. Citations referencing “RT” refer to Ms. Derieg’s Reporter’s Transcript, with the
9 page number listed first followed by line number(s).

10
11 **PROCEDURAL BACKGROUND**

12 Mr. Fresu is a CHRB licensed jockey (#407526). On February 23, 2025, Mr. Fresu rode
13 the number 9 horse, Magic Account, in the seventh race (6 furlongs) at Santa Anita Park
14 (“Seventh Race”). On February 28, 2025 (the next available race day), Mr. Fresu appeared
15 before the Stewards – Kim Sawyer, Grant Baker and John Herbuveaux -- for film review of the
16 Seventh Race, after which the Stewards voted unanimously, 3-0, to suspend Mr. Fresu. Two
17 Stewards – Baker and Herbuveaux -- voted to impose a four day suspension and Steward Kim
18 Sawyer voted for a three (3) day suspension, resulting in a suspension of four (4) racing days for
19 careless riding, under CHRB Rule 1699, for “failure to make an effort to maintain a straight
20 course leaving the starting gate, causing interference, resulting in the disqualification of his
21 mount....” (Steward Ruling, Appellant’s Exhibit 2). The four-day suspension was the result of
22 adding an extra day to what otherwise would have been a three-day suspension based on Mr.
23 Fresu having been suspended for careless riding within the past 60 days. On March 1, 2025, Mr.
24 Fresu, through his counsel, filed a notice of appeal pursuant to Business & Professions Code
25 Section 19517 and a request for a stay of the suspension pursuant to CHRB Rule 1761. The
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1 CHRHB denied the request for a stay on March 1, 2025. On March 5, 2025, the Honorable Curtis
2 A. Kin, Judge of the Superior Court of the State of California, County of Los Angeles, granted
3 Mr. Fresu's *ex parte* Petition for Writ of Mandate and issued an order enjoining and restraining
4 the CHRHB from enforcing the Stewards' Ruling pending a ruling on this appeal. On May 8,
5 2025, a hearing was held in person at Santa Anita Park before the Hearing Officer. At the request
6 of the parties, the Hearing Officer ordered written closing arguments to be filed on May 19,
7 2025, which the Parties simultaneously filed on that date.

8 LIST OF ADMITTED EXHIBITS

9 The following exhibits were offered by the Parties and admitted into evidence.

10 Appellant Exhibit 1: Video of Race 7, Santa Anita Park, February 23, 2024.

11 Appellant Exhibit 2: Report of the Board of Stewards Los Angeles Turf Club, February
12 24, 2025.

13 Appellant Exhibit 3: Official Chart, 7th Race, Santa Anita Part, 2/23/2025.

14 Appellant Exhibit 4: "Average Stride Length and Stride Rate of Thoroughbreds and
15 Quarter Horse During Racing", *Transitional Animal Science in Sports and Exercise* (Admitted
16 for the purpose of asking questions of the Stewards about certain portions thereof)

17 Appellant Exhibit 5: "Physical Fitness of Thoroughbred Racing Jockeys", *Journal of*
18 *Science in Sports and Exercise* (Admitted for the purpose of asking questions of the Stewards
19 about certain portions thereof)

20 Appellant Exhibit 6: CHRHB Rule 1699 Riding Rules

21 Appellant Exhibit 7: Steward Ruling LATS043 (2025)

22 CHRHB Exhibit 1: Steward Ruling LATS020 (2025)

1 (a) A horse shall not interfere with any other horse. Interference is defined as
2 bumping, impeding, forcing or floating in or out or otherwise causing any other horse to lose
3 stride, ground momentum or position.
4

5 (b) A horse which interferes with another as defined in subsection (a) may be
6 disqualified and placed behind the horse so interfered with if, in the opinion of the Stewards, the
7 horse interfered with was not at fault and due to the interference lost the opportunity for better
8 placing.
9

10 (c) Jockeys shall not ride carelessly, or willfully, so as to permit their mount to
11 interfere with any other horse.

12 (d) Jockeys shall not strike or strike at another horse or jockey so as to impede,
13 interfere with, intimidate, or injure.

14 (e) If a jockey rides in a manner contrary to this rule, the mount may be
15 disqualified, and the jockey may be suspended or otherwise disciplined by the Stewards.
16

17 (f) When suspending a jockey for riding contrary to this rule, the Stewards shall
18 issue a suspension of two riding days, and shall issue a suspension greater than the minimum for
19 (1) more than one infraction of this rule by the jockey within any contiguous 60 day calendar
20 period or (2) any infraction which, in the opinion of the stewards, jeopardized the safety of
21 another horse or jockey.
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23
24 **California Business & Professions Code Section 19517 – Grounds for Board**
25 **to Overrule a Decision of the Stewards**
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1 (a) The board, upon due consideration, may overrule any steward’s decision other
2 than to disqualify a horse due to a foul or a riding or a driving infraction in a
3 race, if a preponderance of the evidence indicates any of the following:

- 4 (1) The steward mistakenly interpreted the law.
- 5 (2) New evidence of a convincing nature is produced.
- 6 (3) The best interests of racing and the state may be better served.

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9 (a) From every decision of the stewards, except a decision concerning the
10 disqualification of a horse due to a foul or a riding or driving infraction, an
11 appeal may be made to the Board.
12

13 **CHRB Rule 1764 – Appearance at Hearing Upon Appeal**

14 The Board shall notify the appellant, the stewards and all licensees or other
15 persons affected by decision under appeal of the date, time and location of its hearing in the
16 matter. The burden shall be on the appellant to prove the facts necessary to sustain the appeal.
17

18 **California Government Code Section 11425.10, Subdivisions (a)(1) and (2)**

19 **(Governing Procedures Requirements)**

20 (a) The governing procedure by which an agency conducts an adjudicative
21 proceeding is subject to all of the following requirements:

22 (1) The agency shall give the person to which the agency action is directed
23 notice and an opportunity to be heard, including the opportunity to present
24 and rebut evidence.

25 (2) The agency shall make available to the person to which the agency action
26 is directed a copy of the governing procedure....
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1 **Law Review Commission Comment to California Government Code Section**
2 **11425.50, Subdivision (a)(2)**

3 Subdivision (a)(2) requires only that the agency “make available” a copy of the
4 applicable hearing procedure. The requirement is subject to a rule of reasonableness in the
5 circumstances and does not necessarily require the agency routinely to provide a copy to a
6 person each time agency action is directed to the person. The requirement may be satisfied, for
7 example, by the agency’s offer to provide a copy on request.
8

9
10 **California Government Code Section 11425.50**

- 11 (a) The decision shall be in writing and shall include a statement of the factual
12 and legal basis for the decision.
13
- 14 (b) The statement of the factual basis of the decision may in the in the language
15 of, or by reference to the pleadings. If the statement is no more than a
16 repetition or paraphrase of the relevant statute or regulation, the statement
17 shall be accompanied by a concise and explicit statement of the underlying
18 facts or record that support the decision....
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22 **FACTUAL FINDINGS**

23 I.

24 On February 23, 2025, Mr. Fresu rode the number 9 horse, Magic Account
25 (“Magic Account”), in the seventh race (6 furlongs) at Santa Anita Park (“Seventh Race”).
26 Magic Account did not begin the race in a straight line but instead immediately crossed over to
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1 the inside. [See Appellant’s Exhibit 1]. Within 3 ½ to 4 ½ strides from the starting gate Magic
2 Account made contact with the #8 horse, Blue Cheese Olive, before Appellant corrected Magic
3 Account’s path and moved his horse to the outside.
4

5 II.

6 The Stewards (Kim Sawyer, Grant Baker and John Herbuveax), by a vote of 3-0,
7 suspended Mr. Fresu for careless riding for “failing to make an effort to maintain a straight
8 course leaving the starting gate, causing interference.” [Appellant’s Exhibit 2 and 7]. The
9 Stewards unanimously found Appellant in violation of California Horse Racing Board rule
10 #1699 (Riding Rules – careless riding). The Stewards voted to impose a suspension of four days
11 with two Stewards – Stewards Baker and Herbuveaux -- voting for a four-day suspension and
12 Steward Sawyer, in the minority, voting for a suspension of three days. Steward Sawyer believed
13 a three-day rather than a four-day suspension was appropriate. [Appellant’s Exhibit 2].
14

15 III.

16 Mr. Fresu is an experienced and successful jockey who has had approximately
17 8,000 mounts, 275 wins and winnings of \$20 million during his professional riding career which
18 commenced in 2014. [R.T. 150 – 151]. The suspension imposed by the Stewards on February 28,
19 2025, was Appellant’s second citation for a careless riding violation within a 60-day period. [See
20 CHRB Exhibit 1, Steward Ruling, Ruling Date January 19, 2025].
21

22 IV.

23 Shortly after the beginning of the Seventh Race, the number 8 horse, Blue
24 Cheese Olive, began to drift inward and Magic Account followed Blue Cheese Olive, filling the
25 gap to the left created by Blue Cheese Olive. [Appellant’s Exhibit 1].
26

27 V.
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1 Blue Cheese Olive made contact with the horse to the inside, Navy Man (#6),
2 terminated its inward drift upon making contact with Magic Account approximately 3 ½ to 4 ½
3 strides from the starting gate, causing Blue Cheese Olive to stumble and at which point Magic
4 Account moved outward. Appellant presented testimony that could support a finding that the
5 contact between Magic Account and Blue Cheese Olive occurred as soon as 2 ½ strides from the
6 starting gate (the testimony of Appellant’s expert, jockey Mike Smith). It appears more likely
7 that the contact occurred between 3 ½ to 4 ½ strides (based upon the testimony of the three
8 Stewards – Stewards Sawyer, Baker and Herbuveaux) and the video evidence of the Seventh
9 Race (Appellant’s Exhibit 1). It appears more likely that the contact occurred no sooner than 3 ½
10 strides but possibly occurred as late as 4 ½ strides from the starting gate based on the testimony
11 of the three Stewards, the testimony of Appellant (who testified that it occurred approximately 3
12 to 4 strides after the starting gate) and based on the video of Race 7 [Appellant’s Exhibit 1].
13
14

15 VI.

16 The Stewards who were on duty at Santa Anita on February 23, 2025 – Kim
17 Sawyer, Grant Baker and Luis Jauregi – disqualified Magic Account, placing Magic Account
18 behind Blue Cheese Olive in the finishing order for the Seventh Race. [Appellant’s Exhibit 7].
19 The Stewards summoned Appellant for a film review hearing to be held on February 28, 2025,
20 the next racing day, by placing Appellant’s name on the board in the jockey room, a standard
21 practice to notify jockeys to appear before the stewards for film review. [RT 25: 1-4]
22
23

24 VII.

25 Appellant had notice of the film review held by the stewards on February 28,
26 2025. Appellant had 5 calendar days to consult counsel and prepare to present his explanation of
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1 how he conducted himself during Race 7. He had an opportunity to present “his side of the story”
2 and the opportunity to defend his riding. [RT 24:16-25:10].

3
4 VIII.

5 On February 28, 2025, Stewards Sawyer, Baker and Herbuveaux, who was
6 on duty covering that day for Steward Luis Jauregi, conducted a film review session with
7 Appellant. At the film review, Appellant received the opportunity to explain and defend his
8 riding.

9
10 IX.

11 The Stewards unanimously ruled that Appellant violated CHRB Rule 1699 for
12 “failure to make an effort to maintain a straight course leaving the starting gate, causing
13 interference, resulting in disqualification of his mount from sixth to eighth place; a violation of
14 California Horse Racing Board rule #1699 (Riding Rules – careless riding – second offense in
15 the last (60) days).” Exhibit 2.

16
17 X.

18 The Stewards voted 2-1 to impose a four-day suspension, with Steward Sawyer
19 “feeling a three-day penalty was appropriate rather than a four-day suspension. Exhibit 2. The
20 Stewards had previously ruled on January 19, 2025, that Appellant violated Rule 1699 while
21 riding in the tenth race at Santa Anita Park on January 18, 2025 (CHRB Exhibit 1), a decision
22 that Appellant did not appeal. The Stewards’ ruling that Mr. Fresu violated CHRB Rule 1699 for
23 careless riding on February 28, 2025, thus constituted Appellant’s second violation of Rule 1699
24 for careless riding within a period of 60 days.

25
26 XI.

27 [Testimony of Steward Kim Sawyer]
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1 Kim Sawyer was the first witness called by the CHRB (the Parties disagree over
2 which side bears the burden of proof; without waiving its position that the burden rests with
3 Appellant under Business and Professions Code Section 19517, the CHRB agreed to present its
4 case first, without conceding the procedural points raised by Appellant, calling Steward Sawyer
5 as its first witness). Ms. Sawyer has been a steward in California since 2005 and has been
6 involved in horse racing since 1968 when she began her career as a professional jockey. She has
7 held numerous jobs in the horse racing industry, including as a jockey, outrider, trainer and in the
8 racing office. [RT 19: 9-15].
9

10
11 XII.

12 Ms. Sawyer observed the Seventh Race along with Stewards Lius Jauregi and
13 Grant Baker [RT 18:24-19:4], and the Stewards disqualified Magic Account. [RT 22:12-21;
14 Appellant Exhibit 3]. Ms. Sawyer testified that any time there is contact it draws a steward's
15 attention. [RT 20:17-19] The Stewards gave Appellant notice to appear at film review to be
16 conducted on February 28, 2025, which was the next racing day [RT 19:17-18] by posting his
17 name on the board in the jockey's room. [RT 160:23-25]. (Appellant knew he was required to
18 appear before the Stewards for film review because he saw his name on the board [RT 160:23-
19 25] and his mount had been disqualified in the Seventh Race. [Exhibit 3]). Appellant had actual
20 notice of the film review and 5 days to consult with counsel and marshal his arguments to defend
21 his riding. Sawyer testified that she does not usually give jockeys a copy of hearing procedures
22 for the film review. [RT 57:13]. No copy of written hearing procedures was given to Appellant.¹
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28 ¹ Neither Party is contending that Appellant received a copy of written procedures for the film review. The Stewards testified they did not provide written procedures. See e.g. Steward Herbeveux's testimony. [RT 114:16-19].

1 XIII.

2 Ms. Sawyer did not see Appellant attempt to guide or straighten Magic Account
3 before the horse made contact with the horse to its inside, Blue Cheese Olive with Magic
4 Account's fifth stride [RT 22:24-25; RT 23:24-25], and then Mr. Fresu pulled off. [RT 23:13-
5 14].
6

7 XIV.

8 Ms. Sawyer testified that the Stewards expect a jockey to react by the horse's
9 third stride. [RT 23: 18-19; 70:5-6]. Ms. Sawyer testified that a proper effort by Appellant would
10 have been to "pull on the right rein and guide his horse from breaking inward". [RT 27:11-14].
11

12 XV.

13 Ms. Sawyer does not think Mr. Fresu acted willfully or intentionally. Rather, she
14 believes Mr. Fresu rode carelessly by failing to attempt to correct his horse's course sooner when
15 Magic Account may have followed BCO's inward drift. Ms. Sawyer testified that Appellant
16 failed to act to prevent Magic Account from following Blue Cheese Olive. [RT 30:21]. Ms.
17 Sawyer testified that failure to act can constitute careless riding. [RT 63:17-21].
18

19 XVI.

20 Ms. Sawyer testified that jockeys generally, but not always, are afforded more
21 leniency at the beginning of a race where jockeys typically have less control and it is visible that
22 a horse is not controllable: "When they the opportunity to control that horse is when we feel we
23 have to get involved". [RT 33:16-23]. It depends on the extent of interference. Ms. Sawyer
24 distinguished the level of control a jockey has at the first jump, i.e. when a horse moves from a
25 standstill in the gate to a gallop, when jockeys have less control of their horse. [RT 33].
26

27 XVII.
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1 Ms. Sawyer agreed with the statement in the article Appellant’s counsel asked her
2 to comment on – the highlighted passage on page 30 of Exhibit 5, an article entitled *Physical*
3 “Fitness of Thoroughbred Horse Racing Jockeys” published in the *Journal of Science in Sport*
4 *and Exercise*, and dated September 12, 2023 – that reaction time is the ability to react to a
5 stimulus and give the appropriate response to it. [Exhibit 5 (admitted not for the truth of the
6 matter asserted but for whether witnesses agreed or disagreed with the statement)]. Ms. Sawyer
7 testified that by the second stride the jockey would have known the horse was not on a straight
8 course (and Magic Account was beginning to angle by its second stride) and it was not until the
9 horse’s 5th stride that contact was made. She testified that she prefers to act by the third stride.
10 “I’ve seen jockeys react the first jump. I’ve seen them react the second jump. If they don’t react
11 after that, I don’t think they’re trying to react”. [RT 46:20-22].
12

13
14 XVIII.

15 Ms. Sawyer does not know or look at reaction time but knows how many strides
16 based her conclusion and decision on the number of strides. [RT 47:1-2].
17

18 XIX.

19 Magic Account’s head started to tilt outward after contact with Blue Cheese
20 Olive. [Sawyer testimony and Appellant Exhibit 1].
21

22 XX.

23 The Stewards prefer that jockeys to take corrective action from an improper
24 course by the horse’s third stride. [RT 47: 7] “If not every time, most every time we expect to see
25 a reaction within three strides out of the gate”. [RT 64:10-12]. Ms. Sawyer testified to this
26 expectation of the number of strides within which they should correct course is reviewed with
27 the jockey colony at the beginning of every race meet. [RT 64:8-11].
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3 XXI.
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5 Ms. Sawyer explained in her testimony that the rider of Blue Cheese Olive,
6 which drifted inward at the beginning of the race, was not summoned for film review because it
7 was closer to the beginning of the race and Blue Cheese Olive did not interfere but rather caused
8 a disruption that was “very minimal”. [RT 53: 12-15] No jockey other than Mr. Fresu was
9 summoned for film review and only Magic Account was disqualified in Race 7. [RT 54:14-16].
10

11 ///

12 XXII.

13 Ms. Sawyer testified that the practice of the stewards is to summon jockeys to
14 film review at a set time between 10:30 and 11 am by placing their name on the board in the
15 jockey’s room and they know to come in the next morning. [RT 25: 1-4]. The stewards do not
16 give jockeys summoned for film review written procedures. [RT 26: 10-13; 57 11-13]. When the
17 potential penalty is a suspension of less than 10 days, the Stewards give notice for the film
18 review by placing the jockey’s name on the board in the jockey room. [RT 57:14-21].
19

20 XXIII.

21 Ms. Sawyer testified that all stewards agreed that Appellant had a “careless ride”
22 in Race 7. [RT 55-56; 58: 12-14]. Sawyer believes that Appellant’s ride was careless but not
23 extraordinarily so and thus it warranted a three day, rather than a four-day, suspension. [RT
24 56:9-14]. She distinguishes the ride of the jockey who road Blue Cheese Olive, who “made an
25 effort to correct” course after making contact with the #6 horse (Navy Man) within 3 strides. [59:
26 1].
27
28

1 XXIV.

2 Ms. Sawyer testified that jockeys know that they need to correct their course by
3 feeling the horse drift. Reaction time is important. She would have wanted to see Mr. Fresu
4 correct his horse’s drift by the second stride but they “give them the third stride”. [RT 60:23-
5 61:2]. Jockeys should know the expectation of the stewards to be on a straight course by the third
6 stride because the stewards meet with the jockey colony at the beginning of the meet. Jockeys
7 can feel a horse drifting even if their head is not turned -- it is “part of the job.” [R.T. 63:5-13].
8 Other than the starting gate, jockeys can go wherever they want on the racetrack as long as they
9 are clear. [RT 70:21-22]
10
11

12 XXV.

13 [Testimony of Steward Grant Baker]

14 Steward Grant Baker has been a Steward for the CHRB since 2001. [RT 72:14-
15 14].
16

17 XXVI.

18 While observing working as a Steward and observing Race 7, Mr. Baker’s
19 attention was drawn to a horse that bobbed near the beginning of the race. [RT 73:16-21].
20

21 XXVII.

22 Mr. Baker testified that the horse in Race 7 broke “uneventfully” but four strides
23 toward the inside the number Magic Account contacted (“made contact with”) the number 8
24 horse. [RT 74:15-17; 75:11-14] Mr. Baker also testified that Mr. Fresu’s horse took
25 approximately 4 and a half strides before there was any reaction by Appellant “to attempt to do
26 anything”. [RT 75:21-23].
27

28 XXVIII.

1 Baker testified that the jockey rather than Magic Account was responsible for the
2 errant path. [RT 76:18]. By the second stride they like to see a sign of an attempt to straighten
3 the mount. They like to see a straight course. “So by the second stride, we like to see these
4 athletes grab a rein and do something to show that they’re attempting to straighten their mount.”
5 [RT 76:5-7] Appellant did not maintain a straight course and did not correct. [RT 87:5-9].
6

7
8 XXIX.

9 Mr. Baker testified that the Stewards did not give Appellant with a copy of
10 written procedures governing hearing before the stewards for his film review. [RT 80:15-18].
11

12 XXX.

13 Mr. Baker testified that he based his vote the ruling for failure to make an effort
14 on the fact that he did not see Appellant “grab a line or a rein.” [RT 81:18-21] Baker testified
15 that he based his decision on Appellant not demonstrating an effort to straighten his horse’s
16 inward drift. [RT 81:22-25]. He acknowledged it was possible for a jockey to have tried to
17 straighten the mount without raising his elbow but does not know what that action would be.
18 [82:1-5; 82:8-10]. He testified there was no observable effort to straighten his horse’s course. He
19 found Appellant acted “carelessly” by did not take action to prevent interference until the horse
20 had made 4 – 4 ½ strides [RT 84:1-2] and thus rode without care by not taking action – a
21 “corrective measure”. [RT 84; 84:23-85-5].
22

23
24 XXXI.

25 Mr. Baker testified that Appellant had an opportunity to deliberate before his
26 horse collided with Blue Cheese Olive. [RT 85:6-8]. Mr. Baker doesn’t know how much time
27 Appellant had, but he bases his determination on the number of strides. Based on his experience
28

1 as a steward, by the second stride, the jockey would have known corrective action was needed.
2 [RT 84:11-20] Mr. Baker did not see Appellant make an effort at that time to straighten his
3 mount and did not see any effort at all. [RT 86:3-4].
4

5 XXXII.

6 Mr. Baker testified that Blue Cheese Olive's inward drift created a gap, and
7 observed Appellant steered his horse inward for 4 ½ strides based on the position of his arms and
8 elbows. Mr. Baker could tell Appellant was steering inward "[b]y his arms and elbows going
9 forward." [RT 89:22-25]. Mr. Baker described that as a lack of care. [RT 84:18] Mr. Baker
10 declined to agree or disagree with the notion that the jockey has less control of his horse at the
11 beginning of a race. [RT 92:6-20].
12

13
14 XXXIII.

15 Mr. Baker agrees with the assertion of the highlighted portion of Exhibit 5 (page
16 30 of "Physical Fitness of Thoroughbred Horse Racing Jockeys") that jockeys are required to
17 react by making split second decisions. [RT 94:10-13].
18

19 XXXIV.

20 Mr. Baker does not know how much time Mr. Fresu had to react but believes he
21 failed to make an effort to maintain a straight course until Magic Account made contact with
22 Blue Cheese Olive. [RT 95:13].
23

24 XXXV.

25 Mr. Baker testified that Appellant was advised at his film review session that he
26 faced the possibility of suspension, had an opportunity to explain himself during the film review
27 [RT 102]. Appellant had previously been before the Stewards for film review. [R.T. 103].
28

1 XXXVI.

2 Mr. Baker observed a lack of effort by Appellant to straighten his mount. [RT
3 104:3-13]. He approximated it took four and a half strides to correct. [RT 104:24-25]. Whether
4 Seeing effort can be seen is significant when assessing whether riding was careless. [RT 106:5-
5 7]. Stewards look at the entire picture. [RT 106:19].

6 XXXVII.

7 [Testimony of Steward John Herbuveaux]

8 John Herbuveaux has been a CHRB steward since 1983 and he also serves as a
9 CHRB hearing officer. [RT 108].

10 XXXVIII.

11 Mr. Hebuveaux was working on February 28, 2025, filling in for another
12 steward, and participated in Appellant's film review that day. The other Stewards drew his
13 attention to Magic Account. [RT 110]. Mr. Herbuveaux didn't see sufficient effort by Mr. Fresu
14 to straighten his horse's course. [RT 111:17-21]. He voted for a three-day suspension, "the
15 normal procedure", plus one extra day because this was Appellant's second offense in 60 days.
16 [RT 112:9-11]. Mr. Hebuveaux testified that it has been his practice in the State to issue a
17 minimum suspension of three days for a careless riding violation under Rule 1699. [RT 113:22-
18 23].

19 XXXIX.

20 Mr. Herbuveaux testified that he did not provide Appellant with a copy of any
21 film room procedures. [RT 114:16-19].

22 XXXX.

1 Mr. Herbuveaux saw “some effort” but not enough effort or “sufficient effort” by
2 Appellant to correct his horse’s course. [RT 115:3-9]. He testified he should have kept his horse
3 on a “true course, on a straight course”. [RT 115:23]. He does not know if Appellant acted
4 intentionally (he could not speak to his intent and does “not know if he intended to do that”) but
5 believes he rode carelessly. [RT 116:22; 117:5; 117:23-24]. He did not see A²appellant steer his
6 horse inward. [RT 119:19-21].
7

8 XXXXI.

9 Mr. Herbuveaux testified that jockeys “very possibly” have³ less control at the
10 start of the race. [RT 120:21-25]. Jockeys get the first jump out of the gate because they do not
11 know what a horse is going to do. [121:18-23]. Making an effort to control the horse is part of
12 being a jockey. He expects effort to correct the horse’s course at the beginning of a race by the
13 second jump. He did not see Appellant make sufficient effort before the horse had made 3 to 4
14 strides. [RT 125].
15

16 XXXXII.

17 Mr. Herbuveaux testified that Magic Account’s head was tilted outward prior to
18 or on contact with Blue Cheese Olive and acknowledged that it was possible that was due to
19 pressure on the right rein and pulled off on contact with the inside horse. [RT 128].
20

21 XXXXIII.

22 Jockeys are allowed anywhere on the racetrack as long as they do not interfere with
23 another horse. [RT 123:9-12]. Mr. Herbuveaux agrees with the statement in Exhibit 5 that split
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1 second decision making is required of jockeys as it is true with everyone in life. [RT 112:16-
2 113:3]. A jockey exercising due care would correct a horse’s inward drift and that attempt to
3 straighten should begin with the second jump. [RT 129].
4

5 XXXXIV.

6 [Testimony of Jockey Mike Smith]

7 Appellant presented the testimony of jockey Mike Smith, who was certified as an
8 expert witness based on his experience as a jockey as summarized below, to offer opinions on
9 how Appellant rode Magic Account in the Seventh Race and the challenges jockeys face during
10 a race. Smith has had a highly successful career as a jockey, with 35,000 mounts, 5,700 wins and
11 \$350 million in winnings. He has ridden the winner of the Kentucky Derby, Preakness and
12 Belmont and a number of other highly prestigious races and awards. [130-131]. He has testified a
13 number of times. [131:24-132:3]. While he is not and never has served as a steward [RT 146:8],
14 he has watched numerous races for the purpose of determining if a jockey committed a rules
15 violation (but without making a determination) [RT 146:9-11], he is knowledgeable about how
16 jockeys should ride, make decisions and handle the challenges they face during a race from the
17 perspective of an experienced and accomplished jockey.
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19

20 XLV.

21 In preparation for his testimony, Mr. Smith reviewed Appellant’s Exhibit 1, the
22 video of the Seventh Race. [RT 132:18]. Mr. Smith testified that he saw, although it was very
23 hard to tell, “very, very few strides”, “at most” a stride or 2, before Magic Account drifted in and
24 made contact with the horse to its inside. [RT 134;21-23; 135:1-6]. He testified that the first few
25 strides out of the gate are “dictated mainly by the horse”. [RT 135:8-13]. Going from a standing
26 start, it is important to break well so the first few strides are theirs. [RT 135:14-17]. At the
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1 beginning, it is about going for a position. The horses are “herd animals” and have a natural
2 tendency to fill gaps. [RT 136:6-11]. Mr. Smith testified that jockeys have the least amount of
3 control of their horses at the beginning of a race. [RT 137:22].
4

5 XLVI.

6 Mr. Smith testified that he saw Blue Cheese Olive drift in at the start and Magic
7 Account filled that gap that BCO created. [RT 138]. Mr. Smith does not believe that Appellant at
8 all intended to interfere with any other horse. [RT 138:21-22]. Mr. Smith’s opinion is that Blue
9 Cheese Olive caused the problem because it broke in and Magic Account filled the resulting gap.
10 [RT 139:11-14]. He testified that Magic Account wanted to veer inside [RT 140:19-20]. He
11 testified that “if you watch the film going on, he continues to have trouble with that horse and
12 does a really good job of keeping him straight”. [RT 139:15-18]. About 100 yards out of the gate
13 you can see [Appellant] pulling really hard on the right rein to trying to keep him straight. [RT
14 140:15-23].
15

16 XLVII.

17 Mr. Smith testified that jockeys “without a doubt” are capable of controlling their
18 horses without their elbows out [RT 141:11-14]. He believes that Mr. Fresu attempted to make
19 such a correction even if one does not see his elbows out. [RT 141:17]. Mr. Smith testified that
20 Magic Account appears to be an “extremely difficult” horse [RT 141:23], which was seeking to
21 veer in. In Mr. Smith’s opinion, Mr. Fresu is a very strong jockey capable of making corrections
22 to his horse’s course without having his elbows extended. [RT 147:18-21]. Mr. Smith opined that
23 Mr. Fresu was not careless. [RT 142:15-16]. He testified that “careless” is a label he would
24 reserve for someone who throws the riding crop away and bares in whereas Mr. Fresu “gave an
25 effort”. [RT 143:4-8].
26
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1 XLVIII.

2 Mr. Smith acknowledged he is not a steward but noted that he has ridden in and
3 watched numerous races during the course of his career. [RT 146].
4

5 XLIX.

6 Smith testified that later in the race, Magic Account drifted inward, and Mr.
7 Fresu had trouble with his horse. Mr. Fresu did a good job to keep him straight. [RT 139:15-18].
8

9 L.

10 [Testimony of Appellant Antonio Fresu]

11 Mr. Fresu has been a professional jockey for 14 years, during which he has had
12 8,000 mounts, 275 wins and purses worth \$20 million. [RT 150:17-24]. He has ridden in
13 approximately 1600 races in California over the last 2 years. [RT 151:17-20].
14

15 LI.

16 Mr. Fresu testified that at the beginning of a race a jockey needs to give off a little
17 rein to allow the horse to get a good jump. Mr. Fresu testified that in the Seventh Race, he was
18 not trying to gain position or do anything. There was some space because the other horse broke
19 more inward than his horse and came back at him. When the other horse “came back” at him, his
20 horse and the inside horse bumped, he corrected and did his best to keep his horse straight. [RT
21 152:16-22]. It occurred “very, very quick.” [RT 152:23-25] It occurred in a “split second”. [RT
22 152:25].
23
24

25 LII.

26 Mr. Fresu testified that he does not remember exactly realizing he was drifting
27 inward, as “everybody just trying to get a clean break”. [RT 154:9-13]. He testified “you need to
28

1 give a little more rein which they take off a little bit of control from the reins because they need
2 to extend their body. They need to extend their neck to get a good jump”. [RT 154:20-23]. He
3 was just “trying to get him into his action” and did not intend for him to hit Blue Cheese Olive.
4 [RT 155:5-9]. When there was no more gap, he attempted to change his horse’s course. [RT
5 156:6-8]. Mr. Fresu denies that he rode carelessly and does not think the Stewards’ decision that
6 he rode carelessly was fair. [RT 155:14-16]. He had a split of a second. [RT 155:20-21]. He
7 estimates it took less than two seconds. [RT 153:13]. He also estimates when the contact took
8 place: “Counting now probably three, four strides” after the start. [RT 153:7-9].
9
10

11 LIII.

12 Mr. Fresu rejected the notion that was expressed by other witnesses for the CHRB
13 that in order to direct a horse in any particular direction a jockey must have their elbow out. [RT
14 157:18-21].
15

16 LIV.

17 Mr. Fresu testified that he could not have done anything to prevent the contact
18 and believes he did his best to maintain a straight course and wanted to ride safely for all –
19 including the other jockeys and horses. [RT 158:12-14; RT 159:19-22; 160:11-15]. Mr. Fresu
20 testified that the horse was “really tough to control” and it tried “to move inwards”. [RT 158:20-
21 22]. Mr. Fresu believed Magic Account’s head turned outward at the start due to his use of the
22 rein. [RT 159:13-17].
23

24 LV.

25 Mr. Fresu testified that he is pursuing this appeal, not because the suspension is
26 “very large”, but because he believes the Stewards’ ruling was not a fair decision. [RT 160:4-5].
27
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1 LVI.

2 Mr. Fresu saw his name on the board in the jockeys' room for the film review and
3 had a chance to explain himself to the Stewards. [RT 161:6-8].
4

5 LVII.

6 Mr. Fresu testified that at about four strides was the moment did he became aware
7 that contact was imminent. [RT 163:5-10]. Prior to that "there was some space". [RT 163:11-13].
8

9 DISCUSSION OF THE ISSUES

10 Following film review on February 28, 2025, the Stewards unanimously found
11 Appellant rode "carelessly" in the Seventh Race, in violation of Rule 1699. All three Stewards,
12 who are experienced and knowledgeable, expressed strong opinions that they supported with
13 credible explanations for why they found that Appellant failed to take corrective action to
14 straighten Magic Account's course or failed to take timely action until the horse had made at
15 least 3 ½ to 4 1/2 strides toward the inside from the starting gate at the beginning of Race 7.
16 Appellant himself estimated his horse, Magic Account, took 3 to 4 strides from the starting gate
17 before it collided with Blue Cheese Olive. [See Findings of Fact, LII]. At that point, according to
18 the testimony of all three Stewards, Appellant did not correct and straighten his horse's course by
19 the third stride from the starting gate, which is the point by which the Stewards expect to see a
20 course correction.
21

22 Appellant presented new evidence, including from veteran, highly successful
23 jockey Mike Smith, who opined that Appellant was not careless, had a horse that was difficult to
24 control and that wanted to move inward based on how it behaved later in the race. Mr. Smith also
25 opined that jockeys have the least amount of control at the beginning of the race and jockeys can
26 correct their horse's course without having their elbows being visibly extended. Mr. Smith also
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1 testified that Magic Account’s head was tilted outward prior to contact which indicated an
2 attempt by Mr. Fresu to correct course. Mr. Fresu testified and explained how he rode in the
3 Seventh Race. He testified that his horse was hard to control, he tried his best to keep it on a
4 straight course, he was not going for position and always tries to race safely for all. He testified
5 that things happened very “quick”, in a split second. [Findings of Fact LII].
6

7 Appellant raised some procedural and burden of proof arguments at the hearing for,
8 contending for the first time that the Stewards failed to give notice, failed to properly document
9 their rulings and failed to apply the proper standard, and thus the instant hearing should be
10 conducted and decided on a de novo basis with the Hearing Officer applying independent judgment.
11

12 First, for the reasons set forth below, the procedural arguments raised by Appellant
13 are colorable but not persuasive. Appellant had actual notice of his film review as he saw his name
14 written on the board in the jockeys’ room [Findings of Fact LVI], and he was not deprived of
15 proper notice for the film review. The film review was properly conducted and documented and
16 an adequate record created. The burden of proof in this appeal rests with the Appellant pursuant to
17 Business & Professions Code 19517.
18

19 Appellant has not met his burden of proof to show by preponderance of the
20 evidence that the Stewards ruled erroneously. While Mr. Fresu has presented new, substantial
21 evidence to support the argument that he did not ride carelessly, he has not shown by a
22 preponderance of the evidence that the Stewards’ unanimous ruling that he violated CHRB Rule
23 1699 was erroneous. In the alternative, the Hearing Officer finds that even if a de novo standard
24 were required in and applied in this matter with the Hearing Officer exercising independent
25 judgment (as Appellant argues would be appropriate), the preponderance of evidence shows that
26 Appellant violated CHRB Rule 1699, as explained in Section B below.
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1 A. Procedural Issues Raised by Appellant

2 As noted above, Mr. Fresu raised several threshold procedural issues for the first
3 time at his appeal hearing – an alleged failure by the Stewards to provide Appellant with notice of
4 film review (citing Government Code Section 11425.10(a)(1)); alleged failure of the Stewards to
5 provide Appellant a copy of the written procedures governing his film review (citing Government
6 Code Section 11425(a)(2)); a claim that the instant appeal hearing should be decided de novo by
7 Hearing Officer exercising independent judgment; and an argument that the Stewards should have
8 applied a clear and convincing evidence standard based on the holding of *Ettinger v. Medical*
9 *Quality Assurance Board*, 135 Cal. App. 3d 853 (1982)(involving the suspension of a medical
10 license). Appellant has not established that Stewards and CHRB violated these requirements as
11 explained below, and the standard of review is as set forth in Business and Professions Code
12 Section 19517. The *Ettinger* cited by Mr. Fresu, which held that a clear and convincing evidence
13 standard should not be applied to an adjudicative procedure to suspend a professional license, is
14 distinguishable from the instant matter and there is no case cited that applied that holding to the
15 context of a suspension of a jockey pursuant to the procedures outlined in the CHRB Rules and
16 Business and Professions Code. Finally, the Stewards did not fail to create an adequate record in
17 following the custom and practice the Stewards generally follow in determining whether to
18 suspend a jockey. Mr. Fresu’s procedural arguments are addressed below.

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22
23 **1. Appellant Received the Required Notice of His Film Review.**

24 First, Appellant cites Government Code §11425(a)(1) for the proposition that he
25 did not receive written notice of his film review. That provision of the Government Code provides:
26 “The agency shall give the person to which the agency action is directed notice and opportunity to
27 be heard, including the opportunity to present and rebut evidence.” As noted, Government Code
28

1 Section 11425(a)(1) requires notice, but that statute does not specify written notice. The evidence
2 showed that Appellant had notice – with his name being posted (written) on the board in the
3 jockey’s room summoning him to appear before the Stewards on February 28, 2025 (the next
4 racing day). He had actual notice of the film review session and had 5 days to prepare to participate
5 in the film review and had the opportunity to explain and defend his actions during that film review
6 session. Having recently been before the stewards for another inquiry for careless riding, in
7 January, 19 2025, which resulted in Appellant being cited for careless riding (a ruling which he
8 did not appeal)(CHRB Exhibit 1), he was or should have been aware of the procedures for a film
9 review session. The evidence at the instant appeal hearing showed that he had an opportunity to
10 explain himself before the Stewards. [Findings of Fact LVI; Testimony of Steward Herbuveaux,
11 RT 161:6-8].

14 **2. Appellant Has Not Established That the Stewards Violated Government**
15 **Code 11425(a)(2) by Not Providing Appellant with a Copy of Written Film**
16 **Review Procedures.**

17
18 Mr. Fresu Appellant established, and there is no dispute, that the Stewards did not
19 provide Mr. Fresu with a copy of written procedures for his film review. However, as noted above,
20 Appellant was aware of how his film review would be conducted, having appeared before the
21 Stewards for that type of proceeding the previous month (January of 2025). In addition, the Law
22 Revision Comments to Government Code Section 11425(a)(2) note that the requirement in Section
23 11425 (a)(2) of “shall make available” is subject to a “rule of reasonableness” and it is not
24 necessarily a requirement to provide a copy to a person each time agency action is directed to that
25 person. “The requirement may be satisfied, by example, by the agency’s offer to provide a copy
26 on request.” See Law Revision Comments. There is not any evidence in the record that Appellant
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1 requested a copy of the procedures or that the Stewards indicated he could have a copy of any
2 procedures on request. More likely, film review is a summary procedure where the jockeys sit with
3 the stewards, review video of the race in question, provide their explanation and the stewards make
4 a ruling thereon. Having just been before the Stewards for such a proceeding where the same rule
5 – CHR 1699 -- was at issue -- Appellant had the information necessary to prepare for the film
6 review session, gather his thoughts in advance (5 days), consult with counsel if he so desired and
7 explain his riding and the decisions he made in the Seventh Race to the Stewards. Appellant has
8 thus not established a violation of the notice provisions set forth in the Government Code.
9

10 **3. The Stewards Adequately Stated and Explained Their Ruling.**

11 The Stewards cited their reasons for finding a violation of CHR 1699. [Appellant
12 Exhibits 2 and 7]. They satisfied the requirement to state the legal and factual basis of their ruling.
13 While the record they created is somewhat brief, in summary form and does not state what
14 standard the Stewards applied (e.g. preponderance of the evidence, clear and convincing evidence,
15 etc.), their written record sets forth the grounds on which the Stewards based their decision and
16 appears to be in the form customarily used by the Stewards.
17

18 **4. The Burden of Proof Rests with Appellant Pursuant to Business & 19 Professions Code Section 19517.**

20 Appellant also argues that suspension of a professional license such as Appellant's
21 riding license issued by the CHR requires clear and convincing evidence. Appellant cites *Ettinger*
22 *v. Medical Quality Assurance Board*, 135 Cal. App. 3d 853, 857 (1982), a case involving the
23 suspension of a medical license, for the proposition that the Stewards should have applied a clear
24 and convincing evidence standard in an administrative procedure where a vested right, a
25 professional license was subject to suspension. [Closing Brief of Appellant, page 6-7]. No case
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1 was cited by the Appellant showing that the clear and convincing evidence standard applied in
2 *Ettinger* from 1982 is applicable to the suspension of a jockey and for less than one week. The
3 preponderance of the evidence standard of evidence standard required by Business & Professions
4 Code 19517 appears to apply to this appeal. The appeal should not be decided on a de novo basis.

5
6 Appellant did present new evidence (the second possible basis by which an appeal
7 can succeed pursuant to Business and Professions Code Section 19517), summarized as follows:
8 Mr. Fresu elicited testimony from the Stewards, including some statements based upon excerpts
9 from scientific journal articles, that they agree with the notion that quick reactions are required of
10 jockeys. Mr. Fresu also presented the opinions offered by his expert, highly accomplished veteran
11 jockey Mike Smith, and his own testimony that supported his actions. That new evidence is
12 discussed below.

13
14 B. Appellant Did Not Carry His Burden to Establish by a Preponderance of
15 Evidence Any of the Grounds Set Forth in California Business and Professions
16 Code Section 19517 to Overturn the Decision of the Stewards in Ruling #43.

17
18 First, Appellant did not establish the Stewards mistakenly interpreted the law under
19 the first prong – subsection (a) -- of Business and Professions Code Section 19517. CHRB Rule
20 1699 can be violated by jockeys riding carelessly, or willfully (which neither CHRB is arguing for,
21 nor did the Stewards find), so as to permit their mount to interfere with any other horse. CHRB
22 Rule 1699 (c). There was substantial evidence from which the Stewards could have concluded that
23 Appellant either impeded or interfered with the horse to his inside (Blue Cheese Olive), which
24 stumbled upon contact with Magic Account, and/or failed to maintain a straight course and correct
25 that course timely and prior to his horse making 3 ½ to 4 ½ strides from the starting gate. Mr. Fresu
26 Appellant provided an explanation for his riding and decision making in the Seventh Race, as did
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1 Mr. Smith, but those explanation fell short of showing by a preponderance of the evidence that the
2 Stewards erred in applying the law to what they observed and finding that Appellant rode
3 carelessly. In simple terms, the explanations provided by each of the Stewards were more
4 convincing. The Stewards were unanimous in testifying that Mr. Fresu either failed to take any
5 action or failed to take sufficient timely action to correct his course by the third stride of his horse
6 and before Magic Account interfered with Blue Cheese Olive.
7

8 Second, while Appellant did offer new evidence to support his position,
9 namely, jockey Mike Smith’s testimony and expert opinions, statements from journal articles
10 with which the Stewards who testified agreed and the testimony of Appellant himself, the weight
11 of the evidence presented showed it more likely that Appellant rode carelessly in the Seventh
12 Race because it was more likely that Mr. Fresu failed to take corrective action until at least three
13 and one half strides (or perhaps four or four and one half strides from the gate), there was no
14 apparent effort, or at a minimum, sufficient effort, made by Appellant to correct Magic
15 Account’s course before that time. Mr. Fresu testified that his horse was drifting inward and he
16 did not realize there was problem until the collision with Blue Cheese Olive. It happened, in his
17 testimony, “very, very quick” and in a “split second”. [RT 152:25]. But as Ms. Sawyer testified,
18 it is “part of the job” to fix a horse’s drift. [Finding of Fact XXIV, RT 63:5-13]. Mr. Fresu did
19 not present enough new, credible evidence to show by a preponderance of the evidence that the
20 decision of the Stewards should be overruled. Rather the evidence presented showed that Mr.
21 Fresu failed to take sufficient timely action to correct his horse’s drift, there was not a visible
22 effort to take corrective action (he failed, for example, as Mr. Baker testified, to visibly grab a
23 rein (see Findings of Fact, XXVIII; RT 76:5-7). Numerous reviews of the race video (Appellant
24 Exhibit 1) support the testimony of the Stewards that Mr. Fresu did not attempt to correct course
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1 by the third stride, as the Stewards expect to see and explain to the jockey colony at the
2 beginning of each meet.

3 Third, the best interests of racing would not be served by overruling the
4 decision of the Stewards. The evidence showed Appellant allowed, or did not prevent his horse,
5 to move inward at the start of the race without correcting that course before 3 ½ to 4 ½ strides.
6 That failure to act sufficiently and timely resulted in a potentially dangerous collision.
7 Fortunately, no injury to either a horse or a jockey occurred. Mr. Fresu had recently (within the
8 previous 60 days) incurred another careless riding violation. Jockeys do have to make quick
9 decisions, but they also are required to correct a horse's course within a certain number of strides
10 in order to avoid danger to themselves, the other jockeys and the horse. "That's the job." [RT
11 63:5-13]. On balance, although Mr. Fresu presented evidence that things happened "very, very
12 quick", he did not demonstrate that he did not have a choice other than to continue on an inward
13 course and bump into Blue Cheese Olive. It would not serve the best interests of racing to
14 overrule the unanimous Stewards' decision in this matter.
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18 For the foregoing reasons, Mr. Fresu has not established any of the grounds to
19 overrule the Stewards under Business and Professions Code 19517 and Stewards' Ruling #43 to
20 suspend Appellant for four days (i.e. a three-day suspension with another day added for a second
21 violation for careless riding within 60 days of his January 2025 violation under CHRB Rule 1699
22 within 60 days of his January 2025 violation) should not be overruled.
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25 Dated: July 15, 2025

/s/Edward J. Weiss

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Edward J. Weiss, Hearing Officer

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PROPOSED DECISION RE: ANTONIO FRESU APPEAL OF THE RULING OF THE STEWARDS #43 DATED
FEBRUARY 28, 2025