

BEFORE THE HORSE RACING BOARD

STATE OF CALIFORNIA

In the Matter of the Appeal from the Board
of Stewards Official Ruling #012, Santa
Anita Autumn Meet, dated October 10, 2016

Case No. SAC 16-0044

NORBERTO ARROYO, JR.
CHRB License #288131
Appellant

DECISION

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

The Decision is hereby remanded to the Board of Stewards to issue a ruling and order imposing a three a (3) day riding suspension.

IT IS SO ORDERED ON January 26, 2017.

CALIFORNIA HORSE RACING BOARD
Chuck Winner, Chairman



Rick Baedeker
Executive Director

1 Patrick J. Kane, Esq.
2 501 West Broadway, Suite 800
3 San Diego, California 92101
4 Telephone: (858) 381-7860
5 Facsimile: (866) 581-9302
6 Email: pkane@mauricewutscher.com

7
8 **BEFORE THE CALIFORNIA HORSE RACING BOARD**
9 **STATE OF CALIFORNIA**

10 In the Matter of:	) Case No.: SAC 16-0042
11 Appeal of the Board of Stewards Official	) PROPOSED DECISION RE: APPEAL OF
12 Ruling No. 12, Santa Anita Autumn Meet,	) THE BOARD OF STEWARDS OFFICIAL
13 Dated October 10, 2016,	) RULING NO. 12, SANTA ANITA
14 and,	) AUTUMN MEET, DATED OCTOBER 10,
15 In the Matter of:	) 2016; AND THE APPEAL OF THE
16 Appeal of the Board of Stewards Official	) BOARD OF STEWARDS OFFICIAL
17 Ruling No. 18, Santa Anita Autumn Meet,	) RULING NO. 18, SANTA ANITA
18 Dated October 21, 2016,	) AUTUMN MEET, DATED OCTOBER 21,
19 NORBERTO ARROYO, JR.	) 2016
20 CHRB LICENSE NO. 288131	)
21 APPELLANT	)
	) Hearing Date: November 19, 2016
	) Time: 10:00 a.m.

22 **I. INTRODUCTION**

23 The instant matter concerns the Appeal of the Board of Stewards Official Ruling No. 12,
24 Santa Anita Autumn Meet, dated October 10, 2016 (the "October Tenth Appeal"), and the
25 Appeal of the Board of Stewards Official Ruling No. 18, Santa Anita Autumn Meet, dated
26 October 21, 2016 (the "October Twenty-First Appeal"), respectively.

27 The October Tenth Appeal and October Twenty-First Appeal were consolidated and
28 came for hearing on November 19, 2016 at 10:00 a.m. at the Del Mar Thoroughbred Club
located in Del Mar, California 92014. Appellant Norberto Arroyo, Jr. ("Appellant") was

present and represented by Bing Bush, Esquire. The California Horse Racing Board ("CHRB") was present and represented by Senior Special Investigator, Phillip Miyazaki.

Pursuant to California Horse Racing Board Rule 1414, Hearing Officer Patrick J. Kane ("Officer") presided over this matter. Michelle Derieg recorded all testimony presented during this proceeding. Safety steward Luis Jauregui was also present throughout the proceeding.

The instant matter's record closed at the conclusion of the proceedings on November 19, 2016 at approximately 11:30 a.m.

II. EXHIBITS ADMITTED INTO EVIDENCE

A. Exhibits the CHRB Entered into Evidence.

1. The October Tenth Appeal.

The CHRB entered the following exhibits into evidence relating to the October Tenth Appeal:

Exhibit "1"	Notice of Hearing;
Exhibit "2"	Appeal of Norberto Arroyo, Jr. filed by Bing Bush, Jr., Esq. Dated October 11, 2016;
Exhibit "3"	CHRB Executive Director Rick Baedeker's October 12, 2016 Order Denying Stay;
Exhibit "4"	October 13, 2016 Order Granting Appellant's Ex Parte Application for a Stay, Case No. BS165829, Superior Court of California, County of Los Angeles-Central Division;
Exhibit "5"	Stewards' Minutes Dated October 9, 2016 and October 10, 2016, Relating to Ruling LATC No. 12;
Exhibit "6"	Board of Stewards' Official Ruling, LATC No. 12, Santa Anita Autumn Meet;
Exhibit "7"	C.H.R.B. Rule 1699-Riding Rules and C.H.R.B. Rule 1766-Designated Races;
Exhibit "8"	Program Copy-First Race, Santa Anita Park, Sunday, October 9, 2016;

Exhibit "9" Results for the First Race, Santa Anita Park, Sunday, October 9, 2016; and

Exhibit "11" DVD of the First Race at Santa Anita Park Run on October 9, 2016.

2. The October Twenty-First Appeal.

The CHRB entered the following exhibits into evidence relating to the October Twenty-First Appeal:

Exhibit "1" Notice of Hearing;

Exhibit "2" October 26, 2016 Declaration of Service Re: Notice of Hearing;

Exhibit "3" Appeal of Norberto Arroyo, Jr. filed by Bing Bush, Jr., Esq. Dated October 11, 2016;

Exhibit "4" Order Denying Stay Issued by Wendy Voss on behalf of CHRB Executive Director Rick Baedeker on October 24, 2016;

Exhibit "5" October 25, 2016 Order Granting Appellant's Ex Parte Application for a Stay, Case No. BS165843, Superior Court of California, County of Los Angeles-Central Division;

Exhibit "6" Stewards' Minutes Dated October 20, 2016;

Exhibit "7" Board of Stewards' Official Ruling, LATC No. 18, Santa Anita Autumn Meet;

Exhibit "8" C.H.R.B. Rule 1699-Riding Rules and C.H.R.B. Rule 1766-Designated Races;

Exhibit "9" Program Copy-Eighth Race, Santa Anita Park, Thursday, October 20, 2016;

Exhibit "10" Results for the Eighth Race, Santa Anita Park, Thursday, October 20, 2016; and

Exhibit "12" DVD of the Eighth Race at Santa Anita Park Run on October 20, 2016.

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

2 Appellant did not enter any exhibits into evidence during the October Tenth Hearing nor
3 did Appellant enter any exhibits into evidence during the October Twenty-First Appeal Hearing.

4 **III. LIST OF TESTIFYING WITNESSES**

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

6 Appellant testified on his own behalf during both the October Tenth and October
7 Twenty-First Appeal Hearings.

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

9 The following witnesses testified on behalf of the CHRB during, both, the October
10 Tenth and October Twenty-First Appeal Hearings:

- 11
 - The Honorable Kim Sawyer; and

12
 - The Honorable Grant Baker.

13 **IV. THE OCTOBER TENTH APPEAL, CASE NO. 16-0044**

14 As stated above, the October Tenth and October Twenty-First Appeals have been
15 consolidated for purposes of this Proposed Order. The proposed Order addresses each Appeal
16 separately, beginning with the October Tenth Appeal.

17 **A. Background and Procedural History.**

18 The October Tenth Appeal concerns Appellant's alleged conduct during the first race at
19 Santa Anita Park on October 9, 2016, a \$40,000.00 starter allowance optional claiming race run
20 at six (6) furlongs (the "October 9th Race"). In the October 9th Race the Appellant was aboard
21 the number nine (9) horse, Woot Woot. (Exhibits Pertaining to the October, 10, 2016 Appeal
22 ("10-10 Ex."), Exs. 5, 8.) The specific conduct at issue is whether Appellant crossed over,
23 without sufficient clearance, at the 5.5 "furlong pole," causing interference on the backstretch
24 (the "Alleged October 9th Conduct") in violation of Cal. Code Regs. Tit. 4 § 1699 ("Section
25 1699"). (10-10 Exs. 5, 6.)

26 On October 10, 2016, Appellant appeared before the Board of Stewards (the
27 "Stewards") to review film of his ride during the October 9th Race. (10-10 Ex. 5.) After
28 analyzing the October 9th Race replay and discussing the Alleged October 9th Conduct with

1 Appellant, the Stewards unanimously determined Appellant “crossed over”, without sufficient
2 clearance to do so, causing interference on the backstretch. (Id.)

3 Accordingly, on October 10, 2016, the Stewards unanimously issued Official Ruling
4 LATC No. 12 (the “October 10th Ruling”). The October 10th Ruling made the following
5 factual findings:

6 Jockey NORBERTO ARROYO, JR., who rode WOOT WOOT in the first race at
7 Santa Anita Race Track on October 9, 2016, is suspended for THREE (3) racing
8 days (October 16, 20, and 21, 2016) for crossing over without sufficient
9 clearance, causing interference on the backstretch. This constitutes a violation of
10 California Horse Racing Board Rule No. 1699 (Riding Rules– careless riding).
Pursuant to California Horse Racing Board Rule No. 1766 (Designated Races),
the term of suspension shall not prohibit participation in designated races in
California. (10-10 Ex. 6.)

11 On October 11, 2016, Appellant timely filed a “Notice of Appeal” with the CHRB and
12 simultaneously sought a stay of the Ruling’s three-day suspension. (10-10 Ex. 2.) Appellant
13 identified the following issues as to why the CHRB should grant both the Appeal and request
14 for a stay:

15 (1) The Ruling erroneously concludes that Petitioner violated CHRB Rule #1699
16 by crossing over without sufficient clearance, causing interference on the
17 backstretch. An accurate review of the race illustrates however that Petitioner
18 crossed over from the 7 path to about the 4-5 path, and at the time he crossed
over, there was sufficient clearance. The review will show that the riders behind
Petitioner’s horse did check their horses, but this was AFTER Petitioner had
already crossed over. (10-10 Ex. 2, emphasis in original.)

19 However, the CHRB denied Appellant’s request for a stay on October 12, 2016. (10-10
20 Ex. 3.) Thus, Appellant subsequently filed an Ex Parte Application in the Superior Court of
21 California for the County of Los Angeles, Central Division, seeking a stay of the October 10th
22 Ruling. (10-10 Ex. 4.) The Court granted Appellant’s Ex Parte Application on October 13,
23 2016. (Id.)

24 On October 26, 2016, the CHRB set the October Tenth Appeal for hearing on November
25 19, 2016 at the Del Mar Thoroughbred Club. (10-10 Ex. 1.)

26 **B. Evidentiary Objections.**

27 Appellant objects to CHRB Exhibit 10, Appellant’s C.H.R.I.S. licensing history, on the
28 grounds that it is irrelevant to the October Tenth Appeal. Appellant is correct that his previous

1 licensing history has no bearing on this appeal as his licensing history is inadmissible character
2 evidence.

3 Accordingly, Appellant's objection to CHRB Exhibit 10 is sustained and Exhibit 10 is
4 stricken from the record.

5 Appellant further objects to the testimony of Steward Grant Baker on the grounds that
6 said testimony was "outside the scope of the question." (Hearing Transcript Concerning the
7 October Tenth Appeal ("10-10 H.T.") at p. 40.) This objection is overruled and the testimony
8 of Steward Baker is admitted. First, the disputed testimony was not outside the scope of the
9 question posed. Second, this evidence is admissible pursuant to Government Code Section
10 11513. (See Cal. Gov. Code § 11513(c) ["Any relevant evidence shall be admitted if it is the
11 sort of evidence on which responsible persons are accustomed to rely in the conduct of serious
12 affairs, regardless of the existence of any common law or statutory rule which might make
13 improper the admission of the evidence over objection in civil actions."].)

14 Accordingly, Appellant's objection to Steward Baker's testimony is overruled.

15 **C. Issues on Appeal and Controlling Law.**

16 The issue before this Officer is whether Appellant has met the required burden proof
17 needed to overrule the Stewards' unanimous decision, that shortly after the start of the Subject
18 Race, Appellant crossed over without sufficient clearance to do so, in violation of Section 1699.

19 Section 1699 states in pertinent part:

20 During the running of the race:

21 (a) A leading horse is entitled to any part of the course but when another horse is
22 attempting to pass in a clear opening the leading horse shall not cross over so as to
compel the passing horse to shorten its stride.

23 (b) A horse shall not interfere with or cause any other horse to lose stride, ground
24 or position in a part of the race where the horse loses the opportunity to place
where it might be reasonably expected to finish.

25 (c) A horse which interferes with another and thereby causes any other horse to
26 lose stride, ground or position, when such other horse is not at fault and when
27 such interference occurs in a part of the race where the horse interfered with loses
the opportunity to place where it might, in the opinion of the Stewards, be
28 reasonably expected to finish, may be disqualified and placed behind the horse so
interfered with.

1 (d) Jockeys shall not ride carelessly or willfully so as to permit their mount to
2 interfere with or impede any other horse.

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

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

8 However, if an appellant solely disputes whether the evidence supports a stewards'
9 official ruling, said ruling will not be disturbed on appeal, unless the appellant demonstrates the
10 stewards' official ruling is not supported by substantial evidence.

11 Moreover, if substantial evidence supports a stewards' ruling, then it cannot be
12 overturned simply because a contrary finding would have been equally or more reasonable.
13 (See e.g., *In the Matter of the Appeal of Brian Kornier*, C.H.R.B. Case No. SAC98-033, OAH
14 No. N1998070296 ["An appeal pursuant to Rule 1761 from a stewards' decision following
15 a...hearing, the standard of review to be applied concerning the evidence is the substantial
16 evidence test."]; *Ogundare v. Department of Industrial Relations* (2013) 214 Cal.App.4th 822,
17 829 [If a decision is supported by substantial evidence, it will not be overturned "merely
18 because a contrary finding would have been equally or more reasonable."].)

19 "In general, substantial evidence has been defined in two ways: first, as evidence of
20 ponderable legal significance... reasonable in nature, credible, and of solid value; and second,
21 as relevant evidence that a reasonable mind might accept as adequate to support a conclusion"
22 (*Ogundare*, supra, 214 Cal.App.4th at 830, citations omitted.).

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

26 Because this Appeal only concerns whether the evidence supports the Stewards' Ruling
27 that Appellant crossed over without sufficient clearance to do so in violation of Section 1699,
28 Appellant must demonstrate that substantial evidence does not support the Ruling.

29 **D. Summary of Evidence Presented.**

30 **1. Summary of Appellant's Testimony.**

1 In support of demonstrating that he crossed over with sufficient clearance, Appellant
2 testified on his own behalf.

3 Appellant is Southern California based jockey who has held a jockey's license for
4 approximately sixteen years and has been riding in Southern California for approximately three
5 and half months. (10-10 H.T. at p. 8.) Over the course of his career, Appellant has ridden in
6 approximately 10,000 races. (Id. at p. 9)

7 In regards to the October 9th Alleged Conduct, Appellant explained that he was
8 suspended for "coming down to the inside fence without being completely clear of another
9 horse." (10-10 H.T. at p. 10.) However, Appellant believed he was clear when the alleged
10 conduct occurred. (Id. at p. 11.)

11 Specifically, Appellant stated that his mount, Woot Woot, completely out-broke the field
12 and that he was clear to take over the path of the seven horse – the horse that Appellant
13 allegedly bothered. (10-10 H.T. at p. 11.) Appellant also explained that the rider of the seven
14 horse, Rito Almanza ("Almanza"), allowed his horse to get extremely close to Appellant's
15 mount after Appellant allegedly crossed over with sufficient clearance. (Id. at p. 12.) Appellant
16 believes Almanza should have angled his horse towards the outside, as an experienced rider
17 would have done. (Id.)

18 In further support that no Section 1699 violation occurred, Appellant, while watching
19 the October 9th race replay, explained how he acted safely. (10-10 H.T. at p. 14.) Appellant
20 states that after Woot Woot broke in front of the entire the field, he begins to move his mount
21 towards the inside rail. (Id. at p. 14.) While guiding Woot Woot towards the rail, Appellant
22 claims he is at least a length and half in front of Almanza's mount meaning he is clear to take
23 over the path of Almanza's mount. (Id.) Appellant acknowledged that the Alleged October
24 Ninth Conduct resulted in the lodgment of a jockey's objections. (Id. at p. 15.)

25 At this point, Appellant is only concerned with leaving enough room for the three horse
26 and six horse as he continues to come down. (Id.) However, Appellant believes Almanza's
27 mount "starts running off" towards the same area Appellant is guiding Woot Woot towards and
28 there is not enough room for both horses. (Id. at p. 15.) Appellant states he heard yelling from

1 the jockeys to his inside and recognizes that Almanza's mount attempted to create a "spot"
2 between Appellant and the sixth horse (Id. at p. 15, 17.) Appellant was surprised to see three
3 horses to his inside as opposed to the two horses, the number three and six, that he expected to
4 be to his inside as he "came down" towards the rail. (Id. at p. 20.)

5 Lastly, Appellant testified that he was being punished for Almanza's mistakes because
6 Almanza created the pressure on the other horses and put everyone "in trouble." (10-10 H.T. at
7 p. 20.) Appellant believes the Alleged October 9th incident could have been avoided if Almanza
8 would have angled his mount towards the outside as an experienced rider would have. (Id. at p.
9 20.)

10 **2. Summary of Testimony the CHRB Presented.**

11 In support of its position that substantial evidence supports the ruling that Appellant
12 violated Section 1699, the CHRB called Stewards Kim Sawyer ("Sawyer") and Grant Baker
13 ("Baker"). Both Sawyer and Baker were the on-duty stewards during the October Ninth Race
14 and issued the unanimous Ruling, along with Steward Scott Chaney.

15 While viewing the October Ninth Race replay, Steward Baker explained that:

16 (1) Almanza did not let his mount "take off" as there is no indication "outside
17 pressure" caused aggressive riding on Almanza's part (10-10 H.T. at p. 38); (2)
18 Almanza could not have gone outside of Woot Woot as Appellant contends (Id. at
19 p. 39); (3) Appellant's conduct created significant contact between Almanza's
20 mount and another horse (Id.); and (4) Appellant rode carelessly in "coming
21 down" without the clearance to do so making it extremely "tight" for the horses to
22 Appellant's inside (Id. at p. 40).

23 Furthermore, Steward Sawyer provided the following testimony:

24 (1) That the momentum of Appellant's mount was not as fast as the horses to the
25 inside as Appellant "crossed over" meaning Appellant has to be more cautious
26 when crossing over immediately after leaving the starting gate (10-10 H.T. at p.
27 45-46); (2) that Appellant did not have enough momentum to cross over the
28 horses to his inside (Id. at p. 48); (3) that Appellant, without being clear, comes
down, makes it "tight" for Almanza's mount, which in turn, impeded the number
six horse (Id. at p. 47); (4) that Appellant never completely crossed in front of
Almanza's mount because if he did, "he would have dropped him [Almanza]"
(Id. at p. 49); (5) Appellant did not gauge the momentum of the horses to his
inside (Id. at p. 52); and (6) that Appellant was not clear when he attempted to
cross over and come down towards the inside rail (Id. at p. 54).

28 ///

1 **E. Discussion and Findings of Fact.**

2 Based upon the evidence presented, substantial evidence supports the Stewards'
3 unanimous Ruling, that the October Ninth Alleged Conduct violated Section 1699.

4 Specifically, Appellant failed to meet the required burden of proof for several reasons.
5 First, the replay of the Subject Race's and the testimony presented demonstrate Appellant
6 "came down" without being clear. Indeed, the video replay demonstrates that Appellant was
7 not a length and a half clear of Almanza's mount when Appellant crossed into the racing path of
8 Almanza. As a result, Appellant impeded several horses to his inside. For this reason alone,
9 substantial evidence therefore supports the Stewards' unanimous Ruling

10 Second, Appellant's argument that the October Ninth Alleged Conduct was Almanza's
11 fault does not advance his position. Specifically, the evidence shows, that Almanza was not
12 aggressively riding his mount when Appellant crossed over towards the rail. The evidence does
13 not show that Almanza could have avoided the alleged conduct if he had gone "outside" of
14 Appellant's mount. For these reasons also, substantial evidence supports the unanimous Ruling
15 and Appellant fails to meet his required burden of proof.

16 Finally, the October Ninth Race replay shows that Appellant moved inward, without
17 sufficient clearance to do so, until reaching the path of Almanza's mount. This created
18 "pressure" causing Almanza and other jockeys to steady or take up. The October Ninth Alleged
19 Conduct was not caused by Almanza or his alleged lack of riding experience. Rather, the replay
20 shows Appellant, attempting to secure a good position, crossed over and came down towards
21 the inside rail, without being clear of the horses to his inside.

22 Thus, for all these reasons, substantial evidence supports the Stewards' unanimous
23 determination that Appellant crossed over without sufficient clearance to do so, causing
24 "interference on the backstretch" in violation of Section 1699.

25 Accordingly, Appellant failed to meet his required burden of proof that substantial
26 evidence does not support the October 10th Ruling.

27 **F. Conclusion and Proposed Order.**

1 Because the evidence presented reasonably supports the Stewards' finding that
2 Appellant crossed over without sufficient clearance to do so causing "interference on the
3 backstretch," Appellant did not meet the burden of proof necessary to sustain Appellant's
4 Appeal.

5 Thus, it is hereby recommended that Appellant's Appeal of SAC 16-0044 be overruled,
6 and that Appellant's three-day suspension for violation of Section 1699 be upheld and
7 reinstated.

8 IV. THE OCTOBER TWENTY-FIRST APPEAL, CASE NO. 16-0045

9 A. Background and Procedural History.

10 The October Twenty-First Appeal concerns Appellant's alleged conduct during the
11 eighth (8) race at Santa Anita Park on October 20, 2016, a \$50,000.00 claiming race run at one
12 (1) mile on the turf course (the "October 20th Race"), in which Appellant was aboard the
13 number one (1) horse, Spanish Hombre. (Exhibits Pertaining to the October, 21, 2016 Appeal
14 ("10-21 Ex."), Exs. 6, 9.) The specific conduct at issue is whether Appellant "drove" between
15 horses at the 3/16th pole, without sufficient clearance, causing significant interference (the
16 "Alleged October 20th Conduct") in violation of Section 1699. (10-21 Exs. 6, 7.)

17 Immediately after the running of the October 20th Race, the Stewards posted an
18 "Inquiry" to review the Alleged October 20th Conduct, and the jockey aboard the fifth-place
19 finisher, Jose Contreas, separately lodged an objection for interference caused by Appellant.
20 (10-21 Ex. 6.) After reviewing the alleged conduct at the 3/16th pole, the Stewards made the
21 following unanimous finding:

22 Film review shows #1 SPANISH HOMBRE looking for racing room behind four
23 (4) rivals as the horse rounds the final turn and heads for home (the finish). This
24 horse then races up into tight quarters and then shifts out and then initiates contact
25 (two times) with the aforementioned rival #3 FORAY. This contact knocked #3
26 FORAY at least two (2) paths out wider on the turf course than where he was
originally traveling. The Stewards received a patrol judge report, reviewed
various replay angles, and spoke to jockeys Arroyo and Contreras. In a
unanimous decision, #1 SPANISH HOMBRE was disqualified from second place
and placed in fourth place. (10-21 Ex. 6.)

27 Appellant was ordered to appear for film review in front of the Stewards on October 21,
28 2016. (10-21 Ex. 6.)

1 On October 21, 2016, the Stewards unanimously issued Official Ruling LATC No. 18
2 (the "October 21st Ruling"), which made the following factual findings:

3 Jockey NORBERTO ARROYO, JR., who rode SPANISH HOMBRE in the
4 eighth race at Santa Anita Race Track on October 20, 2016, is suspended for
5 THREE (3) racing days (October 27, 28, and 29, 2016) for driving between
6 horses, without sufficient clearance, and causing interference which resulted in
7 the disqualification of his mount from second to fourth position. This constitutes
8 a violation of California Horse Racing Board Rule No. 1699 (Riding Rules—
9 careless riding). Pursuant to California Horse Racing Board Rule No. 1766
10 (Designated Races), the term of suspension shall not prohibit participation in
11 designated races in California. (10-21 Ex. 7.)

12 On October 21, 2016, Appellant timely filed a "Notice of Appeal" with the CHRB and
13 simultaneously sought a stay of the Ruling's three-day suspension. (10-21 Ex. 3.) Appellant's
14 based his Notice of Appeal on the grounds "that the Ruling is erroneous and not in accordance
15 with the Horse Racing Law 19517 and CHRB 1761." (10-21 Ex. 3.) Appellant provided no
16 factual or legal assertions justifying the October Twenty-First Appeal, besides generic citations
17 to boilerplate statutory law and state regulations. (Id.)

18 On October 24, 2016, the CHRB denied Appellant's bare-boned and conclusory request
19 for a stay. (10-21 Ex. 4.) Appellant subsequently sought Ex Parte relief in the Superior Court
20 of California for the County of Los Angeles, Central Division, requesting a stay of the October
21 21st Ruling. (10-21 Ex. 5.) The Court granted Appellant's Ex Parte Application on October 25,
22 2016. (Id.)

23 On October 26, 2016, the CHRB set the October Twenty-First Appeal for hearing on
24 November 19, 2016 at the Del Mar Thoroughbred Club. (10-21 Ex. 1.)

25 **B. Evidentiary Objections.**

26 Appellant objects to CHRB Exhibit 11, Appellant's C.H.R.I.S. licensing history, on the
27 grounds it is irrelevant to the October Tenth Appeal. Appellant is correct in that his previous
28 licensing history has no bearing on this appeal as his licensing history is inadmissible character
evidence.

Accordingly, Appellant's objection to CHRB Exhibit 10 is sustained and Exhibit 11 is
stricken from the record.

C. Issues on Appeal and Controlling Law.

1 The issue before this Officer is whether Appellant has met the required burden proof
2 needed to overrule the Stewards' unanimous decision, that Appellant "drove" between horses at
3 the 3/16th pole, without sufficient clearance and causing significant interference, in violation of
4 Section 1699.

5 Because this Appeal only concerns whether the evidence presented supports the
6 Stewards' Ruling that Appellant crossed over without sufficient clearance to do so in violation
7 of Section 1699, Appellant must demonstrate that substantial evidence does not support the
8 Ruling. (See, Cal. Code Regs. Tit. 4 § 1764; *In the Matter of the Appeal of Brian Kornier*,
9 C.H.R.B. Case No. SAC98-033, OAH No. N1998070296; *Ogundare v. Department of*
10 *Industrial Relations* (2013) 214 Cal.App.4th 822, 829.)

11 **D. Summary of Evidence Presented.**

12 **1. Summary of Appellant's Testimony.**

13 Despite moving forward with the October Twenty-First Appeal, Appellant provided no
14 evidence that he did not violate Section 1699. In fact, Appellant explained that he agreed with
15 the Stewards and thought it was a "potentially fair call by the Stewards. (The October 21, 2016,
16 Appeal Hearing Transcript ("10-21 H.T.") at p. 9, lns. 1-11.)

17 Appellant further explained that while, he disagreed with the October 21st Ruling, he
18 understood why the Stewards issued the unanimous Ruling and believed the Stewards "have a
19 case here." (10-21 H.T. at p. 9-10, lns. 22-13.)

20 **2. Summary of Testimony the CHRB Presented.**

21 In support of its position that substantial evidence supports the unanimous Ruling that
22 Appellant violated Section 1699, the CHRB called Sawyer and Baker. Both Sawyer and Baker
23 were the on-duty stewards during the October 20th Race and issued the unanimous Ruling,
24 along with Steward Scott Chaney.

25 In regards to Steward Sawyer's testimony, while viewing the October 20th Race replay,
26 she explained that:

27 ///

28 ///

1 (1) Appellant's was on a horse that was "full of run" and was not patient enough
2 to wait for an opening (10-21 H.T. at p. 12-13, lns. 24-6); (2) Appellant forced his
3 horse out creating severe contact that "really knocks out" the horse to Appellant's
4 outside (Id. at 13, lns. 3-11); (3) there is a second point of contact which resulted
5 from Appellant "forcing his way out" (Id. at lns. 11-15); and (4) the Alleged
October 20th Conduct was so egregious that it resulted in an inquiry and a
unanimous decision to disqualify Spanish Hombre for causing significant
interference (Id. at lns. 20-24).

6 Furthermore, Steward Baker testified that Appellant "aboard the second-place finisher,
7 Spanish Hombre, bumped "Foray," twice, hard, knocking that horse sideways and forcing that
8 rival off his straight course." (10-21 H.T. at p. 14-15, lns. 23-1.) Steward Baker felt Appellant
9 was solely responsible for the Alleged October 20th Conduct. (Id. at lns. 2-5.)

10 **E. Discussion and Findings of Fact.**

11 Based upon the evidence presented, substantial evidence supports the Stewards'
12 unanimous Ruling, that Appellant's Alleged Conduct violated Section 1699. Specifically,
13 Appellant presented little to no evidence that he did not violate Section 1699. In fact, Appellant
14 testified that he understood why the Stewards issued the unanimous October 21st Ruling and
15 that the Stewards "have a case here." (10-21 H.T. at p. 9-10, lns. 22-13.) Appellant therefore
16 admitted that substantial evidence supports the Stewards' unanimous Ruling.

17 Moreover, the October Twentieth Race replay shows that Appellant drove between
18 horses, without sufficient clearance, and caused significant interference. This resulted in the
19 disqualification of his mount from second to fourth position. There is no evidence to dispute
20 this finding, much less a lack of substantial evidence supporting said finding.

21 Accordingly, Appellant failed to meet his burden of proof that substantial evidence does
22 not support the October 10th Ruling.

23 **F. Conclusion.**

24 Because the evidence presented reasonably supports the Stewards' finding that
25 Appellant violated California Horse Racing Board Rule No. 1699 by driving between horses,
26 without sufficient clearance, and causing interference, Appellant did not meet the burden of
27 proof necessary to sustain Appellant's Appeal.

1 Thus, it is hereby recommended that Appellant's Appeal of SAC 16-0045 be overruled,
2 and that Appellant's three-day suspension for violation of Section 1699 be upheld and
3 reinstated.

4 **VIII. PROPOSED ORDER**

5 WHEREFORE, it hereby recommended that Appellant's Appeals of SAC 16-0044 and
6 SAC 16-0045 be overruled, and that Appellant's three-day suspension for each respective
7 violation of Section 1699 be upheld and reinstated.

8 Dated: January 9, 2017


Patrick J. Kane, Esq.
Hearing Officer
501 West Broadway, Suite 800
San Diego, California 92101
Telephone: (858) 381-7860
Facsimile: (866) 581-9302
Email: pkane@mauricewutscher.com

RECEIVED
CHRB
2016 JAN 10 AM 8:06