BEFORE THE CALIFORNIA HORSE RACING BOARD

OF THE STATE OF CALIFORNIA

In the Matter of: **Appeal of the Board of Stewards Official Ruling #18, LATC Santa Anita Autumn Meet, dated October 12, 2020** **UMBERTO RISPOLI** **CHRB License #400838** **Appellant**	Case No. SAC 20-0136

DECISION

The attached Proposed Decision is hereby rejected by the California Horse Racing Board. The appellant's appeal of SAC 20-0136 is granted and the Board of Steward's Official Ruling #08, Santa Anita Autumn Thoroughbred Meet, dated October 12, 2020 shall be reversed.

IT IS SO ORDERED ON May 21, 2021.

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. 18, Santa Anita Autumn Meet, Dated October 12, 2020** **UMBERTO RISPOLI** **C.H.R.B. LICENSE NO. 400838** **Appellant.**	Case No.: SAC 20-0136 **PROPOSED DECISION RE: APPEAL OF THE BOARD OF STEWARDS' OFFICIAL RULING NO. 18, SANTA ANITA AUTUMN MEET DATED OCTOBER 12, 2020** Hearing Date: January 26, 2021 Time: 10:00 a.m.

I. INTRODUCTION

This matter arises from an Appeal of the Board of Stewards' Official Ruling No. 18, Santa Anita Autumn Meet, Dated October 12, 2020 (the "Appeal").

This Appeal came for hearing on January 26, 2021 at 10:00 a.m. via video conference. 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 Umberto Rispoli ("Appellant") was present and represented by attorney Darrell Vienna. The California Horse Racing Board ("Respondent" or the "CHRB") was present and represented by attorney Robert Brodnik.

The Appeal's evidentiary record closed at the conclusion of the proceedings on January 26, 2021 at approximately 1:30 p.m.

II. EXHIBITS ADMITTED INTO EVIDENCE

A. Exhibits Entered into Evidence by the CHRB.

The CHRB entered the following exhibits into evidence:

Exhibit "1"	Notice of Hearing, Case No. SAC 20-0136, Dated January 20, 2021;
Exhibit "2"	Board of Stewards' Official Ruling No. 18, Santa Anita Autumn Meet, Dated October 12, 2020;
Exhibit "3"	Board of Stewards' Minutes for the week of October 9, 2020 through October 12, 2020; and
Exhibit "4"	DVD of the Seventh Race at Santa Anita Run on October 11, 2020.

B. Exhibits Entered into Evidence by Appellant.

Appellant entered the following exhibits into evidence:

"AE 1"	Board of Stewards' Official Ruling No. 18, Santa Anita Autumn Meet, Dated October 12, 2020;
"AE 2"	Board of Stewards' Minutes for the week of October 9, 2020 through October 12, 2020;
"AE 3"	Equibase Chart of the Seventh Race, Santa Anita, October 11, 2020;
"AE 4"	Equibase Chart of the Sixth Race, Los Alamitos, September 22, 2018;
"AE 5"	Equibase Chart of the Fourth Race, Santa Anita, February 18, 2019;
"AE 6"	Equibase Chart of the Eighth Race, Los Alamitos, June 27, 2020;
"AE 7"	Cal. Code Regs. Tit. 4 § 1699;
"AE 8"	Proposed Amendment to Cal. Code Regs. Tit. 4 § 1688, Use of Riding Crop;
"AE 9"	Cal. Code Regs. Tit. 4 § 1692; and
"AE 10"	Jockeys Preparing for Santa Anita "Say not all Change is Good," Ryan Victor, Dated December 23, 2020.

III. LIST OF TESTIFYING WITNESSES

A. Witnesses Testifying on Behalf of Appellant.

Appellant called the following the witnesses:

- The Hon. Ron Church;
- Chris McCarron; and
- Umberto Rispoli.

B. Witnesses Testifying on Behalf of the CHRB.

The CHRB called the following the witnesses:

- The Hon. Luis Jauregui; and
- The Hon. Kim Sawyer.

IV. FACTUAL FINDINGS

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

I.

On October 11, 2020, Appellant rode the number six (6) horse, Galilean ("Galilean" or the "Horse"), to a first-place finish in the seventh race at Santa Anita, the California Flag Handicap, run at a distance of five and one half (5-1/2) furlongs on the turf course (the "Race"). (Appellant's Exhibit ("AE") 2.)

II.

During the Race's stretch drive, Galilean "drifted inward three paths" into the path of the number two (2) horse, "Mikes Tiznow," without being clear. (Ex. 3.) Specifically, while positioned on the outside of Mikes Tiznow, Galilean gradually drifted inward causing Mikes Tiznow to "steady and check" near the sixteenth pole (the "Conduct"). (Hearing Transcript ("H.T.") at p. 82-83, 85, Ex. 3.)

As a result, the Board of Stewards (the "Stewards") conducted an inquiry of the Race. (Ex. 3.) The Stewards unanimously determined that Galilean caused Mikes Tiznow to steady, but it did not cost Mikes Tiznow a better placing. (Id.) Accordingly, the Stewards made no change to the Race's original order of finish. (Id.)

III.

On October 12, 2020, Appellant appeared before the Stewards to review film of his ride during the Race. (Ex. 3.) After analyzing the Race's replay and discussing the Conduct with Appellant, the Stewards unanimously determined that Appellant "drifted inward three paths into the path of the inside horse (Mikes Tiznow) without being clear, causing [Mikes Tiznow] to steady approaching the sixteenth pole." (Id.)

Accordingly, on July 23, 2020, the Stewards unanimously issued Official Ruling No. 18, Santa Anita Autumn Meet (the "Ruling"), which made the following factual findings:

> Jockey UMBERTO RISPOLI, who rode GALILEAN in the seventh race at Santa Anita Park on October 11, 2020, is suspended for THREE (3) racing days (October 23, 24 & 25, 2020) for failure to make the proper effort to maintain a straight course in the stretch, causing interference. This constitutes a violation of California Horse Racing Board rule #1699 (Riding Rules - Careless Riding).
>
> Pursuant to California Horse Racing Board Rule #1766 (Designated Races), the term of suspension shall not prohibit participation in designated races. (Ex. 2.)

IV.

Appellant subsequently appealed the Ruling. On January 20, 2021, the CHRB set the instant Appeal for hearing on January 26, 2021 via video conference. (Ex. 1.)

V. ISSUES ON APPEAL AND CONTROLLING LAW

The issue before this Officer is whether Appellant met his required burden proof needed to overrule the Stewards' unanimous Ruling, that Appellant shifted in three paths causing Mikes Tiznow to steady and "take up," 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 leading horse is entitled to any part of the course but when another horse is 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.
>
> (b) A horse shall not interfere with or cause any other horse to lose stride, ground, or position in a part of the race where the horse loses the opportunity to place where it might be reasonably expected to finish.

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(c) A horse which interferes with another and thereby causes any other horse to lose stride, ground, or position, when such other horse is not at fault and when 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 reasonably expected to finish, may be disqualified and placed behind the horse so interfered with.

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

Also at issue in this Appeal is Cal. Code Regs. Tit. 4 § 1688 ("Section 1688"), which states in relevant part:

(b) Although the use of a riding crop is not required, any jockey or exercise rider who uses a riding crop during a race or training is prohibited from using a riding crop on a horse:

(1) [D]uring training, except when necessary for the safety of horse or rider; (2) on the head, flanks, or on any parts of its body other than the shoulders or hind quarters; (3) during the post parade or after the finish, except when necessary to control the horse; (4) excessively or brutally causing welts or breaks in the skin; (5) when the horse is clearly out of the race or has obtained its maximum placing; (6) persistently even though the horse is showing no response under the riding crop; (7) more than two times in succession without giving the horse a chance to respond before using the riding crop again; or (8) more than six times during a race, excluding showing or waiving the crop or tapping the horse on the shoulder as defined in subsection (d).

(c) Correct uses of the riding crop are:

(1) showing or waiving the crop without touching the horse; or (2) in an underhanded position with the crop always at or below the shoulder level of the jockey; or (3) tapping the horse on the shoulder with the crop in the down position while having both hands: (A) holding onto the reins, and (B) touching the neck of the horse.

(d) Absent mitigating circumstances, which includes but is not limited to use of the riding crop for the safety of horse and rider, if a jockey or exercise rider rides in a manner contrary to this rule, the stewards shall impose a maximum fine of $1,000 and a minimum suspension of three days.

(e) The jockey or exercise rider shall not be penalized if, in the opinion of the stewards, the use of the crop was necessary for the safety of the horse or rider. (Cal. Code Regs. Tit. 4 § 1688(b), (d)-(e).)

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

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

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 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

In support of his Appeal, Appellant testified on his own behalf as well as separately called Mr. Chris McCarron ("Mr. McCarron") and the Hon. Ron Church ("Mr. Church") to separately testify on his behalf.

A. Summary of Testimony Presented by Appellant.

In support of showing that he did not violate Section 1699, Appellant presented the following testimony:

1. Mr. McCarron's Expert Testimony.

Prior to retiring**,** Mr. McCarron was a jockey for approximately twenty-eight (28) years in which he: (1) won 7,141 races while earning over 250 million dollars; (2) won a total of nine Breeders' Cup races, including five Breeders' Cup Classics; and (3) was inducted into the Racing Hall of Fame in 1989. (H.T. at p. 35.) Appellant offered Mr. McCarron as an expert witness in the field of race riding. (Id. at 36-37.)

Initially, after reviewing four Equibase race charts concerning Galilean's prior races, not including the Race, Mr. McCarron opined that Galilean "has a typical habit of wanting to drift into the lane." (H.T. at p. 40-43.) However, Mr. McCarron admitted that: (1) he does not know how many starts Galilean has made during his career and did not attempt to locate this information in preparation for testifying during this Appeal; and (2) he did not watch any video replay of the races supporting his opinion that Galilean habitually drifts inwards. (H.T. at 58, 61.) In fact, Mr. McCarron conceded his expert opinion is premised upon a "limited set of facts." (Id. at p. 58.)

Concerning the Conduct, Mr. McCarron testified that:

> (1) Appellant attempted to correct Galilean to avoid the Conduct by using the "right rein and the crop in [Appellant's] left hand to maintain a straight course"; (2) Galilean gradually drifted inwards towards Mikes Tiznow for approximately three sixteenths (3/16th) of a mile, which provided Appellant time to react; (3) Galilean "straightened up" in response to Appellant's use of the riding crop; and (4) Appellant was not careless "under the circumstances." (H.T. at p. 44, 47-48, 54, 65.)

Mr. McCarron further testified that the Conduct could have been avoided if Section 1688 permitted Appellant to use the riding crop "to [quickly] correct his Horse." (H.T. at p. 50.) Indeed, Mr. McCarron opined that Appellant's attempt to correct Galilean was reasonable in light of Section 1688's riding crop restrictions. (Id.)

2. Appellant's Testimony.

Appellant is a jockey based in Southern California who has ridden in thousands of races all over the world, including races run in Italy, France, England, Germany, Japan, Hong Kong, South Africa, and the U.S. (H.T. at p. 70.)

Initially, Appellant testified that as the Race participants exited the final turn and entered the stretch, Mikes Tiznow "carried" Galilean out to the five or sixth path. (H.T. at p. 71.) Galilean then began gradually drifting inwards towards the rail despite Appellant applying pressure with his right rein attempting to "straighten up" Galilean. (Id.) However, Galilean did not respond to the pressure and continued drifting towards the inner rail causing the Conduct. (Id. at p. 71-72.) Indeed, Appellant acknowledged that Galilean was responsible for the Conduct causing interference with Mikes Tiznow. (Id. at p. 77-78.)

Appellant further testified that subsequent to the Conduct, he used his riding crop "left-handed," which the Horse "somewhat" responded to "by straitening up a bit." (H.T. at p. 72-73.) Appellant purportedly refrained from using the riding crop to correct Galilean's inward drift in an attempt to comply with Section 1688's riding crop restrictions. (Id. at p. 73.)

Importantly, after reviewing the Race's Replay, Appellant stated he "probably [would] use the riding crop sooner and would probably straighten [Galilean] up earl[ier]" assuming Appellant could use the riding crop in violation of Section 1688, as it was amended on October 1, 2020. (H.T. at p. 73.)

Appellant separately testified that: (1) he used "his best effort" to keep Galilean straight; (2) the Conduct was not the result of Appellant's careless riding; and (3) he "had no intention at all to interfere with [Mikes Tiznow]." (H.T. at p. 74-75, 78.)

3. Mr. Church's Testimony.

Appellant separately called the Hon. Ron Church ("Mr. Church"), an adverse or hostile witness to Appellant. Mr. Church was one of three on-duty stewards during running of the Race. (H.T. at p. 10.) Specifically, Mr. Church provided the following testimony relevant to this Appeal:

> (1) Appellant did not attempt to correct Galilean's inward drift until after the Conduct occurred; (2) the Stewards expect more of an effort from Appellant prior to avoid the Conduct; (3) Appellant "took too much time to correct Galilean's inside drift"; and (4) Appellant's carelessness is evidenced by his failure to quickly correct the Horse's inward drift. (H.T. at p. 19-20, 23, 25-26.)

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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 ("Mrs. Sawyer") and the Hon. Luis Jauregui ("Mr. Jauregui") to testify on its behalf. Mr. Jauregui and Mrs. Sawyer, along with Mr. Church, were the on-duty stewards during the Race.

Concerning Mrs. Sawyer, she provided the following testimony:

> (1) Appellant failed to correct Galilean's inward drift as Appellant "push[ed] [on the Horse]…like he is doing the breast stroke"; (2) Appellant should have "pulled harder on the right rein" to avoid the Conduct to ensure the "safety of his fellow riders"; (3) Appellant's actions, or lack thereof, caused Mikes Tiznow "to lose momentum…during the running of the Race"; (4) the Conduct forced Mikes Tiznow's rider to "take up" to avoid being "dropped" and/or "clipping heels"; (5) Appellant had approximately a sixteenth of a mile to correct the Horse's drift but failed to do so; (6) Section 1688 did not play a role in Appellant's failure to correct the Horse's drift; and (7) Appellant failed to maintain a straight course in the Race's stretch run resulting in the Conduct. (H.T. at p. 88-93, 97-98, 109-111.)

The CHRB separately called Mr. Jauregui who offered the following testimony:

> (1) Appellant failed to take enough corrective action to avoid the Conduct despite having "time to use his stick or pull the right rein…;" (2) the Conduct resulted in Galilean interfering with Mikes Tiznow; (3) Appellant could have done more to avoid the Conduct; and (4) Appellant did not try to correct Galilean until after the Conduct occurred. (H.T. at p. 121-123, 126-127.)

VII. DISCUSSION

It is clear the Stewards' unanimous 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 "make a proper effort to maintain a straight course in the stretch" causing the Conduct. (See Ex. 2, H.T. at p. 109-11.) Specifically, the evidentiary record unequivocally demonstrates that:

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> (1) Appellant failed to take the necessary corrective action to avoid the Conduct despite having approximately a sixteenth of a mile to do so; (2) Appellant's Conduct caused Galilean to interfere with Mikes Tiznow; (3) Appellant did not put forth sufficient effort to correct Galilean's gradual drift until after the Conduct occurred; (4) Appellant did not use his riding crop to correct the Horse's inward drift prior to the Conduct occurring; and (5) Appellant failed to pull on the Horse's right rein to correct Galilean's drift before the Conduct occurred. (H.T. at p. 88-93, 97-98, 109-111, 121-123, 126-127, Ex. 4.)

Appellant separately fails to explain why he did not "pull harder on the [Horse's] right rein" or use the riding crop in an attempt to avoid the Conduct despite: (1) Appellant's claim that Galilean is a big horse who tends to drift inwards while running down the stretch in his respective races; and (2) acknowledging that Galilean did not respond to his attempt to "keep [Galilean] straight." (H.T. at p. 43, 70-71.)

The fact Appellant was aware of Galilean's tendency to "drift in" as well as the fact that Appellant's supposed "corrective measures" failed is even more reason why Appellant was required to put forth more of an effort to avoid the Conduct. The Ruling is supported by a preponderance of the evidence for this reason as well.

This Officer separately notes that Galilean gradually drifted towards the rail for approximately a sixteenth of a mile, providing Appellant plenty of time to either pull the right rein or use the riding crop to avoid the Conduct. Appellant failed to do so meaning Appellant acted carelessly and in violation of Section 1699 for this reason also.

Concerning Appellant's claim that Section 1688's recent amendments affected his ability to avoid the Conduct, said argument is nothing more than a red herring. Importantly, Appellant ignores the fact that Section 1688 explicitly allows a rider to use his or her riding crop in a manner contrary to Section 1688, if doing so ensures the safety of both horse and rider. (See, Cal. Code Regs. Tit. 4 § 1688(d)-(e).)

Here, it is clear Appellant could have used his riding crop in accordance with Section 1688's "safety exception" as the Conduct nearly resulted in Mikes Tiznow nearly clipping heels close to the sixteenth (1/16th) pole. Because Section 1688's safety exception would have protected Appellant in these circumstances, his reliance on Section 1688 is unpersuasive as a matter of law.

Appellant separately ignores the fact that he did not attempt to use the riding crop (in accordance with Cal. Code Regs. Tit. 4 § 1688(c)) to correct Galilean's inward drift prior to the Conduct occurring. (H.T. at p. 72-73, 112, Ex. 4.) In fact, Appellant post-conduct use of the riding crop caused Galilean to "straighten up his movement after [being] struck left-handed." (H.T. at p. 50, Ex. 4.) Appellant's Section 1688 argument fails for this reason also.

Accordingly, the Stewards' unanimous Ruling, that Appellant failed to "make the proper effort to maintain a straight course in the stretch, causing interference" in violation of Section 1699, is supported by a preponderance of the evidence.

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 20-0136 be overruled, and that Appellant's three-day suspension for violating Section 1699 be upheld and reinstated for the reasons stated above.

Dated: April 23, 2021

Patrick J. Kane, Esq.
Hearing Officer